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ABSTRACT

The purpose of this guidebook is to give Minnesota legislators an overview of all laws affecting young people in order to have a reference aid on current state policies toward youth. State statutes and cases that provide rights, responsibilities, and protections for young people under age 18 are described. Part 1 of this guide, "The Laws," consists of substantive laws organized by the following subject categories: economic protection; educational rights and responsibilities; family relations; health and social services; unlawful acts by youths; unlawful acts against youths; and miscellaneous age provisions. Part 2, "The Courts," explains the courts and procedures that deal with youths in civil adult court, criminal adult court, and juvenile court. Citations to Minnesota Statutes and Rules are provided throughout the text. A glossary of legal terms is included at the beginning of the guidebook. (TS)

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ED 402 521

June 1996

Youth and the Law

A Guide for Legislators

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June 1996
Youth and the Law

A Guide for Legislators

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Introduction

Youth and the Law describes Minnesota statutes and cases that provide rights, responsibilities, and protections for young people different from those applicable to adults. The purpose of the guidebook is to give legislators an overview of all laws affecting young people in order to have a reference aid on current state policies toward youth. The guidebook should prove useful for evaluating any proposals for changing these policies.

This is basically a state guide. Federal statutes and cases are included only in a few areas where they dictate state policy or where state policy has been closely linked with federal law for some other reason. **Youth and the Law** does not attempt to cover federal statutes, cases or programs in general.

Legal distinctions are generally made between adults, who are statutorily defined as age 18 and over, and minors, who are statutorily defined as under age 18. **Youth and the Law** uses the terms "minor" and "child" as synonyms. Exceptions occur if the text clearly indicates that "child" means a minor of a particular age or means an individual of any age in relation to his or her parents.

Youth and the Law is divided into two parts: Part 1, **The Laws**, consists of substantive laws organized by subject categories. Part 2, **The Courts**, explains the courts and procedures that deal with youths. A glossary of terms used throughout both Parts 1 and 2 is provided at the beginning of the guidebook.

Unless otherwise noted, all citations are to Minnesota Statutes as amended through 1996, or Minnesota Rules, as of June 1, 1996.

Glossary

AGE OF MAJORITY	The period of time after an individual reaches the age of 18 (M.S. 645.451, subdivision 5).
CHIPS	An acronym denoting a category of juvenile court jurisdiction. "CHIPS" means Child in Need of Protection or Services.
CIVIL ACTION	A lawsuit to establish or redress certain rights. It can be based on a statutory right or a legal rule developed in court cases. It can involve seeking payment of money (damages) or compelling someone to act or refrain from an action (injunction). It involves no possible criminal punishment, such as imprisonment, criminal fine, or developing a record of a criminal conviction. Civil action examples: personal injury, breach of contract, marriage dissolution.
CONTRACT	An agreement between two or more persons that creates a legal obligation to do or not to do a particular thing, such as to perform a service or to buy or sell goods or real estate.
CRIME	Conduct which is prohibited by statute and for which the actor may be sentenced to imprisonment, with or without a fine.
DELINQUENT	A minor ten years old or older who has committed an act that would be a crime if committed by an adult.
FELONY	A crime punishable by a sentence of more than one year imprisonment. Fines for felony offenses may range from $3,000 to $1,250,000, depending on the offense.
GROSS MISDEMEANOR	A crime punishable by a sentence of imprisonment for more than 90 days but not more than one year, and/or up to a $3,000 fine.
JUVENILE	A person who is younger than 18 years old.
LEGAL OR FULL AGE	Eighteen years of age or older. (M.S. 645.451, subd. 6).
MISDEMEANOR	A crime punishable by a sentence of up to 90 days imprisonment and/or up to a $700 fine.
PETTY MISDEMEANOR	An offense that is not a crime, which carries no possibility of imprisonment, but for which a fine of up to $200 may be imposed.
STATUTE OF LIMITATIONS	A deadline set by statute for beginning a particular kind of lawsuit.
TORT	The area of law that involves (1) the breach of a duty to another person, (2) imposed by law, (3) when the person is injured by the breach. It is sometimes defined as the law of legal wrongs committed by private individuals against each other, not based on contracts. Examples include personal injury and libel.

1. The Laws

Minnesota law makes many distinctions between adults and young persons' rights and responsibilities. Part 1 describes the major statutory and case law that differentiates between youths and adults. These provisions have been divided into the areas of economic regulations, education, family relations, health and social services, and criminal law. There is a miscellaneous section for other age provisions.

Usually, legal distinctions are drawn at the age of majority, which is statutorily defined as 18 years. Persons under 18 are minors. They are deemed less able than adults to take responsibility for themselves or to carry out obligations to others. Similarly, they are considered more in need of protection both from their own inexperienced judgments and from the actions of others.

Minnesota law makes some distinctions between adults and youth at points other than 18 years. For example, a few rights are withheld and a few protections are extended until ages 19 or 21 in the belief that 18 year olds are not ready to be entirely on their own in particular areas. On the other hand, not all minors are treated identically under the law. In some instances younger children are considered in need of greater protection or unable to carry out the greater responsibilities of older children. As a result, certain statutes treat minors under such ages as 16, 14, or 10 differently from minors over those ages.

Economic Protection

Minors' economic rights and activities are heavily regulated by statute because it is believed that minors are much less able than adults to support themselves, to make decisions about managing property, or to bargain as equals in employment and other business situations.

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Child Support

All Parents

If a parent consents to have a child reside with an individual or entity other than the parent, or if the child does so by court order, the parent can be required to pay support for the child. **M.S. 256.87, subd. 5**

A parent who is financially able to support a child but fails to do so may have his or her parental rights terminated by the juvenile court. **M.S. 260.221, subd. 1(b)(2)**

Divorced Parents

The court may order either or both parents to pay child support. A parent may also be required to provide health insurance or pay medical expenses for a child. Child means an individual: (1) under 18; (2) under 20 who is still attending secondary school; or (3) who, because of his or her physical or mental condition, cannot support himself or herself. **M.S. 518.171; 518.54, subd. 2; 518.551, subd. 5**

Support Guidelines

Statutory guidelines and other specified factors affect the amount of parental support that courts will award to children of divorced parents, unless the parents each have separate counsel and reach their own support agreement. **M.S. 518.551, subd. 5**

Unmarried Parents

If an individual admits she or he is a child's parent or if parentage is established in a court action, the individual is legally obligated to support the child and will be ordered to pay the amount indicated in the statutory guidelines. **M.S. 257.67, subd. 1**

Enforcement

If a court orders a parent to pay child support, including health insurance or medical or daycare costs, legal mechanisms exist to enforce the order in Minnesota or against a parent who moves to another state. **M.S. 256.87; 257.66; 518.611; 518.613; 518.614; 548.091 and Chapter 518C**

Step-Parents

To determine the amount of public assistance to be granted for a dependent child, the agency considers income of a step-parent living in the same household, after deducting the following: (1) the first $90 of earned income; (2) a personal allowance for the step-parent; (3) amounts paid to support other dependents; and (4) alimony and child support payments. **M.S. 256.74, subd. 1a**

When a divorced parent seeks a change in court-ordered child support, the income of both parents' new spouses, if any, will not be considered in raising or lowering the support amount. **M.S. 518.64, subd. 2**

For further information, see **An Overview of Minnesota's Child Support Law**, June 1996, House Research Department.

Property Rights

Control of a Minor's Earnings or Property

A parent or guardian may claim a minor's wages by notifying the minor's employer. Otherwise, the minor has control of his or her own wages. **M.S. 181.01**

A minor may control his or her own savings account. **M.S. 48.30**

Minor's Contracts

A minor may make a contract but may choose not to complete it, unless it involves the purchase of necessities, like food or shelter. *Miller v. Smith*, 26 Minn. 248, 2 N.W. 942 (1879)

Wills

A minor may not make a will. **M.S. 524.2-501**

Inheritance from Parents

An adopted individual has a legal right to an intestate share of the adopted parents' estate but not to the biological parents' estate, unless the individual was adopted by a step-parent. **M.S. 524.2-114**

If a person does not make a will, his or her children share the estate with the surviving spouse, if that spouse was married to the children's other parent. If no spouse survives, the children share the estate among themselves. **M.S. 524.2-102 and 524.2-103**

If parents were not married to each other and did not leave wills, the children inherit from either parent, if parentage is established pursuant to the Uniform Parentage Act. **M.S. 524.2-114**

A parent who makes a will may intentionally disinherit a child. If it seems the child was omitted from the will by error or because of being born after the parent's death, the child will inherit something. **M.S. 524.2-108 and 524.2-302**

Uniform Transfers to Minors Act

Any kind of property (money, real estate, stocks, etc.) may be transferred to a custodian for a minor's benefit. This kind of custodianship lasts until the beneficiary turns 21. **M.S. 527.21 to 527.44**

Employment

Age Discrimination in Employment

The prohibition against unfair employment practices based on a person's age does not apply to persons until they reach the age of majority. The law permits different treatment in privileges, benefits, services, or facilities for employees under age 21. **M.S. 363.02, subd. 6**

Child Labor

The Minnesota Child Labor Standards Act restricts the age, days and hours, and occupations of working minors. **M.S. 181A.01-181A.12** Employment of minors in Minnesota may also be governed by federal law which differs from the Minnesota law described here.

Age Restrictions. No minor under the age of 14 may be employed, except: (1) a minor may be an actor, performer, or model; (2) those 11 and older may be newspaper carriers; (3) those 12 and older may work in agricultural operations. **M.S. 181A.04, subd. 1; 181A.07, subds. 1, 2, 3**

Day and Hour Restrictions. On school days during school hours, no minor under 16 years may be employed except with a valid employment certificate. **M.S. 181A.04, subd. 2; 181A.05**

No minor under 16 may work any day before 7 a.m. or after 9:30 p.m. except as a newspaper carrier. **M.S. 181A.04, subd. 3; 181A.07, subd. 3**

No one may employ a minor under 16 more than 40 hours per week or more than eight hours in any 24-hour period, except for minors working in agricultural operations with their parents' or guardian's permission. **M.S. 181A.04, subd. 4; 181A.07, subd. 1**

No one may employ a high school student under age 18 after 11:00 p.m. on a school night or before 5:00 a.m. on a school day. With written permission of a parent or guardian a student may work one half hour later or begin one half hour earlier. **M.S. 181A.04**

Occupation Restrictions. All minors may be excluded from employment in any occupation which the Commissioner of Labor and Industry finds by rule hazardous to their well-being. **Minn. Rules, parts 5200.0900-0920** The commissioner also has the power to exempt an individual minor from this restriction. **M.S. 181A.04, subd. 5; Minn. Rules, parts 5200.0940-0960**

Child Labor Exemptions. Minors employed to do home chores or babysitting, or employed by their parents are exempt from the above child labor restrictions. **M.S. 181A.07, subd. 4**

Federal law provides that minors under age 16, working in particularly hazardous agricultural work for their parents, are exempt only if they work on a farm owned or operated by the parent. **29 U.S.C. §213(c)(2); M.S. 181A.11**

Minimum Wage

The minimum wage set by state law does not differentiate between adults and minors. **M.S. 177.24, subd. 1**

The minimum wage does not apply to persons under the age of 18 who are: (1) doing certain agricultural work; (2) babysitting as a sole practitioner; or (3) employed part-time by a municipality as part of a recreational program. **M.S. 177.24, subd. 1; 177.23, subd. 7**

Reemployment Insurance Benefits

Like all adults, a minor may be covered by reemployment insurance laws if the minor satisfies the statutory requirements regarding eligibility. **M.S. 268.07, subd. 2** However, minors in the following employment areas are not eligible for unemployment compensation: (1) agricultural labor performed by a child under 16; (2) service performed by a child under 18 in the employ of a parent; (3) work performed by a student for an academic or vocational program; (4) work performed at a school or university by a student enrolled there; and (5) newspaper delivery by anyone under 18. **M.S. 268.04, subds. 11; 12(13)(f), (15)(d); and 268.08, subd. 11**

Workers' Compensation

A minor with a workers' compensation covered injury with permanent total disability has an imputed permanent total disability rate on the date of injury of 105 percent of the statewide average weekly wage. **M.S. 176.101, subd. 6**

A guardian or conservator shall be appointed to represent the interests of a minor who has a covered workers' compensation injury or who is eligible for survivor benefits. **M.S. 176.092; 176.521**

Educational Rights and Responsibilities

The state of Minnesota is required by its constitution to provide a free education to all children in the state. This section provides an overview of some of the rights and responsibilities of students attending elementary and secondary schools.

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Compulsory Attendance; Attendance Options

Age of Attendance; Compulsory Attendance

Every child between the ages of 7 and 16 must attend school **M.S. 120.101, subd. 5** Local school districts determine the amount of time that children must attend school. For the 2000-2001 school year and beyond, a child must remain in school until that child completes the high school graduation requirements or is 18 years old. A minor who is a parent and who has not completed high school must attend school in order to receive AFDC (Aid to Families with Dependent Children). **M.S. 256.736, subd. 3b**

A child must receive developmental screening before enrolling in kindergarten or first grade in a public school. **M.S. 123.702**

A school age child may be exempted from mandatory attendance requirements under certain circumstances. **M.S. 120.101, subd. 9**

Truancy

A child under age 16 is considered a "**continuing truant**" if the child is in elementary school and absent three school days without a valid excuse or if the child is in middle, junior high, or high school and absent three or more class periods on three days without a valid excuse. **M.S. 260A.02**

School officials must notify a child's parent that the child is a continuing truant. **M.S. 260A.03**

A child under age 16 is considered a "**habitual truant**" if the child is in elementary school and absent seven school days without a lawful excuse or if the child is in middle, junior high or high school and absent one or more class periods on seven school days without a lawful excuse. **M.S. 260.015, subd. 19**

Instruction Requirements

Instruction must occur either in a public school, a non-public school, a church or religious organization, or a home-school. **M.S. 120.101, subd. 4**

Instruction is required in specific subject areas, and must be provided by a person who meets the specific requirements for instructors. **M.S. 120.101, subds. 6 and 7; 125.188**

The performance of every child not enrolled in a public school must be assessed each year. All persons in charge of providing instruction to a child must document that the child received instruction as required by law. This reporting requirement does not apply to a child receiving instruction from an accredited or state-recognized body. **M.S. 120.102, subds. 1-3**

Depending on their qualifications as instructors, parents instructing their children in a home-school may be required to provide greater assessment and documentation of their children's instruction. **M.S. 120.101, subd. 8(b); 120.102, subd. 1(4)**

Penalty

It is a misdemeanor if a person responsible for instruction in an unaccredited non-public school, home, or other institution, fails to comply with compulsory instruction requirements. **M.S. 120.103**

It is a misdemeanor for a person who is legally responsible for a child required to receive instruction, to fail or refuse to provide instruction for that child. **M.S. 127.20**

Residency Requirements

School age children who reside within a district operating public schools may attend those schools without charge. **M.S. 120.06, subd. 1**

Immunization Requirement

No child may enroll or remain enrolled in any elementary or secondary school or child care facility unless an immunization statement is submitted to the school or facility. **M. S. 123.70, subd. 1.** A child need not be immunized if immunization conflicts with a parent's conscientiously held beliefs. **M.S. 123.70, subd. 3(d)**

Enrollment Options ("Open Enrollment")

Students in grades kindergarten through 12 have the option of attending a school or program in a district in which the student does not reside, unless (1) a school board determines by resolution that nonresident students may not attend its schools or programs or (2) a district with a desegregation plan limits the number of transferees. A school board is required to adopt specific standards for accepting and rejecting timely applications. **M.S. 120.062**

Post-Secondary Enrollment Options (PSEO)

Students in the 11th or 12th grade may apply to enroll in a course or program provided by a post-secondary institution. Students may elect to receive secondary or post-secondary credit for successfully completing a course under the PSEO law. **M.S. 123.3514**

Graduation Incentives Program

Eligible students who have experienced or are experiencing difficulty in the traditional education system have the option to enroll in alternative programs or area learning centers. **M.S. 126.22**

Statutory K-12 Curriculum Requirements

Required Areas of Instruction

School districts are required to provide students with instruction in basic communication skills including reading, writing, literature and fine arts, mathematics and science, social studies, including history, geography and government, and health and physical education. **M.S. 120.101, subd. 6**

AIDS Education

School districts are required to develop and implement a program to prevent and reduce the risk of AIDS. Adolescents are the target of this program. **M.S. 121.203, subd. 1**

Review of Instructional Materials

School districts must adopt a procedure for parents and adult students to review instructional materials provided to students. School personnel must make reasonable arrangements for alternative instruction if a parent or adult student objects to the content of the materials. Parents and adult students may provide alternative instruction if the school board fails to satisfy their concerns, but may not receive payment for their costs. School personnel may evaluate the quality of a student's work, but are prohibited from penalizing the student merely because the student arranges alternative instruction. **M.S. 126.699**

Discipline; Bus Privileges; Tobacco Use

Corporal Punishment

A school official may not use corporal punishment to discipline a child. **M.S. 127.45** However, a school official who uses reasonable force within the exercise of lawful authority to discipline a child has a defense against a criminal prosecution and civil liability for the disciplinary act. **M.S. 609.06, clause (6); 127.03, subd. 3**

Dismissal Generally

Dismissals from school are generally governed by the Pupil Fair Dismissal Act of 1974. **M.S. 127.26 to 127.39**

Grounds for dismissal are the willful violation of clearly defined school board regulations, substantial disruption of the learning process, or posing a serious danger to persons or property. **M.S. 127.29, subd. 2** A public school student is entitled to due process and equal protection guarantees when facing dismissal proceedings. Possible outcomes of a dismissal proceeding include exclusion, expulsion or suspension. **M.S. 127.28** A school must attempt to provide a student subject to dismissal with an alternative education program, except where the student creates an immediate and substantial danger to him or herself or to surrounding persons or property. **M.S. 127.29, subd. 1** A school's discipline policy must recognize the school's continuing responsibility to educate a student it dismisses and help prepare the student for readmission. **M.S. 127.38**

Suspension

Before being suspended for one to five days, a student is generally entitled to notice and a meeting with the administration, where he or she will be informed of the grounds for suspension. **M.S. 127.27, subd. 10; 127.30** Generally, a student can be suspended from school for a period of no more than ten school days, and each suspension action must include a readmission plan. If the student poses a serious danger, he or she can be suspended for up to 15 days, provided the school implements an alternative education program for any suspension over five days. **M.S. 127.27, subd. 10; 127.30, subd. 3** The U.S. Supreme Court has declared that suspending a student from a public school requires procedural due process, including written notice of the charges, an explanation of the evidence the authorities have, and an opportunity for the student to present his or her side of the story.

These requirements do not include the right to counsel, a right to confront and cross-examine witnesses, or a right to call the student's own witnesses. *Goss v. Lopez*, 419 U.S. 565 (1975).

Expulsion and Exclusion

If a student is subject to expulsion (preventing an enrolled student from attending school for an amount of time not greater than one school year from the date of expulsion) or exclusion (preventing a prospective student from enrolling in school for up to one school year), he or she is entitled to notice from the administration and to information regarding attendance rights, including the right to a formal hearing and appeal. **M.S. 127.27, subds. 4 and 5; 127.31; 127.32; 127.33** The school is required to notify the student of his or her right of reinstatement within ten days of termination of the dismissal period. **M.S. 127.37**

Firearms in School

A school board must expel for one year any student who brings a firearm to school. The board may modify this expulsion requirement on a case-by-case basis. **M.S. 127.282** A school official must refer to the criminal justice or juvenile delinquency system any pupil who brings a firearm to school unlawfully. **M.S. 127.48**

Admission or Readmission

A school board may prepare and enforce an admission or readmission plan for any pupil who is suspended, excluded or expelled from school. **M.S. 127.31, subd. 15.**

Removal from Class

If a student willfully engages in disruptive, dangerous or unsanctioned conduct, a school official may prohibit that student from attending a class or activity for up to five class periods. This is not considered a dismissal under the Pupil Fair Dismissal Act. **M.S. 127.27, subd. 2; 127.40; 127.41**

Revocation of Bus Riding Privileges

A district may revoke the bus riding privileges of any student who violates the district's school bus safety or student conduct policy. This is not considered an exclusion, expulsion or suspension under the Pupil Fair Dismissal Act. **M.S. 123.801**

Tobacco Products Prohibited

No one may smoke or use any other tobacco product in a public school. The prohibition extends to all school facilities that a

district owns, rents or leases and all district vehicles. **M.S. 144.4165**

Disabled Children

Individuals with Disabilities Education Act (IDEA); Section 504 of the Rehabilitation Act of 1973

A student may be eligible for special education services under IDEA or Section 504. IDEA provides federal funding to states and local educational agencies for expenses incurred in providing special education and related services to those disabled children covered by the act. To be eligible for this funding, states must provide a "free appropriate public education" for all "children with certain disabilities." Section 504 of the Rehabilitation Act, while not a funding provision, requires that educational services be provided to disabled children, some of whom may not be covered by IDEA. The United States Supreme Court has let stand a federal appeals court decision holding that federal law requires school districts to provide educational services to all children regardless of the severity of their handicap. *Timothy W. v. Rochester, New Hampshire School District*, 875 F.2d 954 (1st Cir. 1989), cert. denied, 110 S. Ct. 519 (1990).

Availability of Services and Procedural Requirements under State Law

Each school district is required to provide appropriate nondiscriminatory instruction and services for handicapped children from birth until the disabled child is 22 or completes secondary school, whichever comes first. **M.S. 120.03; 120.17, subds. 1 and 1b**

State law guarantees procedural safeguards and parental participation in the assessment and educational placement of disabled children. To receive such services, a child must be found (1) eligible for special education services according to statewide eligibility criteria, and (2) in need of such services. If school district personnel find that a child meets the eligibility criteria and is in need of special education services, a team that includes the child's parents and appropriately trained school personnel will, after a comprehensive evaluation, develop an Individualized Education Plan (IEP) that contains, among other things, annual educational goals for the child. **M.S. 120.17, subds. 1, 3a, 3b**

Suspension, Exclusion and Expulsion

When a student with an IEP is suspended from school for misbehavior that is unrelated to the student's disabilities, the district must provide the student with special education and related services.

The district is required to review the student's IEP within ten days if the student is expelled, excluded or suspended for ten or more days. *Honig v. Doe, 484 U.S. 305 (1988)*; **M.S. 127.281**

Firearms in School

A district may unilaterally place a disabled student who brings a firearm to school in an alternative setting for up to 45 days. **20 U.S.C. §1415, M.S. 127.282**

Education Records

A district may not limit the frequency with which a disabled child's parent or guardian inspects the child's education records. A district may charge a fee for reproducing the education records unless the fee impairs the ability of the parent or guardian to inspect or review the records. **M.S. 13.04, subd. 5**

Participation in Athletics

State Discrimination Law; Opportunity to Use Ice Arenas

All educational institutions are required to provide equal opportunity for both sexes to participate in athletic programs. Depending upon the grade level, past circumstances, extent of interest and the particular sport, sports programs may offer single sex teams in some cases. **M.S. 126.21** Any school district that operates and maintains an ice arena must offer equal sports opportunities for male and female students to use the ice arena. **M.S. 124.912, subd. 7**

Federal Discrimination Law

Title IX of the Education Amendments of 1972, which prohibits sex discrimination in federally assisted interscholastic athletic opportunities for male and female students, specifies what educational institutions must do in order not to face a cut-off of federal funds. Factors the government will consider in determining whether equal athletic opportunities are available for members of both sexes include whether: the kinds of sports and levels of competition accommodate the interests and abilities of

both sexes; equipment and supplies are provided; game and practice time schedules are comparable; coaching and academic tutoring are available; and locker rooms and other facilities are provided. **Discrimination Based on Sex or Blindness, 20 U.S.C. §1681**

Equal Protection Clause

Female athletes alleging sex discrimination in athletic programs have argued that the equal protection clause of the fourteenth amendment to the federal constitution prohibits rules barring them from male athletic teams or treating female teams differently from male teams. While courts generally agree that the equal protection clause requires permitting females to try out for male teams in contact and non-contact sports, they are unwilling to find a right for females to participate on male teams when there is a separate female team available. See, *Brendan v. Independent School District 742*, 477 F.2d 1292 (8th Cir. 1973); *Leffel v. Wisconsin Interscholastic Athletic Association*, 444 F. Supp. 1117 (E.D. Wisc. 1978); *O'Connor v. Board of Education, Dist. #23*, 645 F.2d 578 (7th Cir., 1980), cert. denied, 454 U.S. 1084.

Right of Participation

The right of participation in extracurricular activities is not a constitutionally protected property interest and is not of equal importance with the right to an education. Without a protected property interest, there are no due process requirements in dismissing a student from a team. Athletic programs are not included in the statutory protections under the Pupil Fair Dismissal Act. **M.S. 127.39, subd. 2**; *Dorn v. Anoka-Hennepin Independent School District No. 11*, Case No. C6-87-1186, Edward W. Bearse, 10th Judicial District (Minn. State trial court) (March 10, 1988).

Minnesota State High School League (MSHSL) Activities

Any student in grade 7 to 12 who wishes to participate in a high school league-sponsored activity must be under 20 years old, attend school regularly and be fully enrolled in the school according to Department of Children, Families and Learning criteria. Although home-schooled students are ineligible to participate in high school league-sponsored activities in the local high school, they may participate through a cooperative sponsorship agreement. **MSHSL Bylaws**

Public School Fee Law

Prohibited Fees

Public school education is free to all eligible students. School boards may not charge fees for necessary goods and services such as instructional materials and supplies, required library books, required school activities, or lockers. A school board may require payment of transportation costs for which state aid is not authorized, if guidelines are established to guarantee that no one is denied an education based upon this cost alone. A board may charge fees for books a student loses or destroys. **M.S. 120.72; 120.73; 120.74**

Authorized Fees

School districts may require students to pay for certain school-related costs specified in statute, such as fees for school uniforms, extracurricular activities, security deposits, personal athletic equipment, supplementary field trips, musical instruments, and personal stationery supplies. School districts must hold a public hearing before imposing a fee that is not authorized or prohibited by statute. **M.S. 120.73; 120.75**

The U. S. Supreme Court ruled against a poor family's equal protection challenge to a North Dakota law allowing some school districts to charge a busing fee while providing students in other districts with free transportation. *Kadrmas v. Dickinson Public Schools*, 487 U.S. 450, 108 S. Ct. 2481 (1988).

Access to Student Records

Limit on Disclosure

Schools must obtain written permission from a parent or a student over 18 before disclosing information in education records unless a statutory exception applies. **20 U.S.C. 1232g (b)(1) and (2)**

Right to Inspect and Review

Parents and students have the right to inspect and review education records within a reasonable period of time. Schools are not required to provide copies of materials in education records unless parents or students cannot inspect the records

personally. Schools may charge a fee for copies of education records. **34 C.F.R. §99.10(a); M.S. 13.03; 13.04; 13.32, subd. 1**

Right to Request That a School Correct Records

Parents and students have the right to request that a school correct education records they believe to be inaccurate or misleading. If a school refuses to change the records, parents and students have the right to a formal hearing. If the school still refuses to correct the records after the hearing, the parent or student may place written comments about the contested information in the records. **20 U.S.C. 1232g (a)(2) (1988)**

Access by Parents to Student Records

A minor student may request that a school deny the student's parents access to educational data about the student. **M.S. 13.32, subd. 2; 13.02, subd. 8** If a school official reasonably concludes that disclosing the information to the parent or guardian could lead to physical or emotional harm to the minor, the official may withhold the data. If, however, the data concern certain medical, dental, mental or other health services, the school official may release the data, if failing to inform the parent would seriously jeopardize the minor's health. **M.S. 144.341 to 144.347** Under state rule, school officials must not deny parents access to a student's education records unless the student is a full-time college student or is 18 years old. **MN. Rules, part 1205.0500, subp. 4**

Directory Information

Directory information is public information such as a student's name, address, and telephone number that generally would not be considered harmful or an invasion of privacy if disclosed. Schools must tell parents and students that they have the right to refuse to let the school designate information about the student as directory information. **M.S. 13.32, subd. 5**

For further information, see **Federal and State Laws Governing Access to Student Records**, February 1994, House Research Department.

Law Enforcement and Court Records on Students

Court Disposition Order

School principals receive the court disposition order on any public or private student from elementary through secondary school who is adjudicated delinquent for (1) an act committed on school property, or (2) an act that would be one of a list of specified felonies if committed by an adult.

The order must be kept in the student's record, may not be released outside the school district other than to another school district to which the student is transferring, and must be destroyed when the juvenile graduates or at the end of the school year after she or he turns 23. The school may obtain additional information from the probation officer with parental consent. **M.S. 260.161, subd. 1b**

Law Enforcement Records

A law enforcement agency may notify the principal or chief administrative officer of a juvenile's school if there is probable cause to believe the juvenile has committed an offense, the victim is a student or staff member of the school, and notice is reasonably necessary for protection of the victim. Notice is not given if it would jeopardize an investigation.

Data from this notice must be destroyed when the juvenile graduates or reaches the age of 23, whichever is earlier. In a county where the county attorney operates a diversion program, a law enforcement agency or county attorney may provide information on participants or juveniles being considered as participants, to school officials and to public or private social service agencies participating in the program. **M.S. 260.161, subd. 3(f)**

Rights of Non-Public School Students

Educational Materials and Student Support Services

School districts are required to provide all students not attending public schools, including those in home schools, with textbooks, individualized instructional or cooperative learning materials, and standardized tests. All material must be secular in nature and cannot be used for religious instruction or worship. A district

must provide the same health services to students of non-public schools as it provides to public school students. Non-public secondary students must be offered guidance and counseling services by the public secondary schools. Allotments for non-public school costs are not to exceed average expenditures for the same public school services. **M.S. 123.931-123.937**

Public school teachers cannot provide Chapter 1 instructional services to eligible non-public school students on non-public school premises because of the potential for violating the first amendment ban on establishing a state religion. *Aguilar v. Felton*, 473 U.S. 402, 105 S. Ct. 3232 (1985).

A school district may provide an interpreter to a deaf student attending a parochial school without violating First Amendment limits on government support for religion. *Zobrest v. Catalina Foothills School District*, 113 S.Ct. 2462 (1993). The U. S. Supreme Court did not say whether the Individuals with Disabilities Education Act (IDEA) requires public schools to pay for such assistance.

Separate School District

Having the state create a separate school district to serve a religious enclave is tantamount to allocating political power on a religious criterion and violates the first amendment establishment clause. *Board of Education of Kirgas Joel Village School District v. Louis Grumet*, 114 S. Ct. 2481 (1994).

Transportation

School districts are required to provide "equal transportation" for non-public school students within the district's boundaries to the same extent they are required to provide transportation for public school students. A district may provide transportation to a non-public school located in another district, but the non-public school must pay the cost of the transportation. **M.S. 123.78**

Tuition Tax Deduction

A taxpayer may deduct for the costs of tuition, textbooks and transportation up to $650 for each dependent in kindergarten to grade 6 and $1,000 for each dependent in grades 7 to 12. The costs of religious books and materials and the expenses of participating in extracurricular non-public school activities may not be deducted. **M.S. 290.01, subd. 19(b)(3)**

Sexual Harassment

Sexual Harassment in Schools Prohibited

Sexual harassment is unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that (1) is a term or condition of receiving education, (2) is used as a factor in decisions affecting a person's education, or (3) has the purpose or effect of substantially interfering with a person's education. Educational sexual harassment can occur when school district employees, independent contractors or volunteers sexually harass students or when students sexually harass other students. Sexual harassment is prohibited by state and federal law. **M.S. 363.01, subd. 41; 363.03, subd. 5**; Title IX of the Education Amendments of 1972

Sexual Harassment and Violence Policies

Each school board is required to adopt a written sexual, religious and racial harassment and violence policy. Each school must develop a process for discussing the policy with students and school employees. **M.S. 127.455**

Victims' Remedies

Under the U. S. Supreme Court decision in *Franklin v. Gwinnet County Public Schools*, 112 S. Ct. 1028 (1992), private individuals have the right to file lawsuits under Title IX of the Education Amendments of 1972 claiming they have been victims of sex discrimination in school (sexual harassment is a form of sex discrimination). Courts are allowed to award unlimited punitive and compensatory damages as a remedy.

Student-to-Student Harassment

Jurisdictions disagree about whether school officials have an affirmative duty to protect students who are sexually harassed by other students, and whether to hold officials accountable for their inability to prevent such harassment. The Office of Civil Rights' opinion is that a school that fails to respond appropriately to student-to-student harassment of which it knows or has reason to know, violates Title IX. The United States Supreme Court has not yet answered the question whether school officials are constitutionally responsible for students' safety. See, e.g., *D.R. v. Middle Bucks Area Vocational Technical Schools*, 972 F.2d 1364 (3d Cir. 1993), and *Doe v. Taylor Independent School District*, 15 F.3d 443 (5th Cir. 1994).

Violence in Schools

Possession of Dangerous Weapons on School Property

It is unlawful for any person to possess, store, keep, use, or brandish a dangerous weapon, a replica firearm, or a BB gun on elementary, middle, or secondary school property or on a school bus while it is transporting students. The offense is punishable by either gross misdemeanor or felony penalties depending on the type of weapon and activity involved. The law exempts certain activities from its scope, such as firearm safety courses and the possession of a weapon with the permission of the school principal. **M.S. 609.66, subd. 1d**

Reports of Dangerous Weapon Incidents on School Property

The Commissioner of Children, Families and Learning, in consultation with others, must develop a standardized form to be used by schools to report dangerous weapon incidents occurring on school property and in school buses while they are transporting students. The form must include certain specified information about the incident, the offender and victim involved in the incident, the cost of the incident to the school and the victim, and the school's response to the incident. Schools must report dangerous weapon incidents to the commissioner semiannually and, in turn, the commissioner must compile and forward the information annually to the legislature and interested government agencies. **M.S. 121.207**

Use of Force against School Officials

It is a gross misdemeanor to assault and inflict demonstrable bodily harm on a school official while the official is performing official duties. A similar assault against a non-school official would be a misdemeanor-level offense. "School official" means a teacher, administrator, or other employee of a public or private school. **M.S. 609.2231, subd. 5**

Violence Prevention Education Programs

Minnesota law encourages all school districts to integrate a violence prevention program into their existing K-12 curricula. The law also directs the Commissioner of Children, Families, and Learning to assist school districts, on request, in developing and implementing such programs. A grant program is available to help school districts pay for developing, implementing, and continuing these programs. The amount of the grant award is $3

per actual pupil unit; grant funding for the 1995-1996 and 1996-1997 school years is about $1.80 per pupil unit. **M.S. 126.77 and 126.78**

First Amendment Rights

Freedom of Speech

Students retain their first amendment right to freedom of speech in school provided their speech does not result in "material disruption" of the education process. The test for determining the degree of disruption is "whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time." *Tinker v. Des Moines Ind. Comm. School District*, 393 U.S. 503, 89 S. Ct. 733 (1969).

The Supreme Court has ruled that a student's speech containing "explicit sexual metaphors" is not protected by the first amendment. *Bethel School District v. Fraser*, 478 U.S. 675, 106 S. Ct. 3159 (1986).

School officials have the right to impose reasonable restrictions on student speech in school sponsored student papers. *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260, 108 S. Ct. 562 (1988). The United States Supreme Court declined to review the application of *Hazelwood* to a student council election in which school officials disqualified a student from the election for making "discourteous" and "rude" remarks about the assistant principal during a speech at a school sponsored assembly. *Poling v. Murphy*, 872 F.2d 757 (6th Cir. 1989), cert. denied, 493 U.S. 1021, 110 S. Ct. 723 (1990).

Hate Speech

In *Wisconsin v. Mitchell*, 113 S. Ct. 2194 (1993), the U. S. Supreme Court upheld a state statute prescribing higher penalties for crimes motivated by racial or other bias. Arguably, this ruling provides a legal framework for districts to impose more severe discipline for improper behavior motivated by bias.

Prayer in the Schools

The U.S. Supreme Court declared the district-sanctioned recitation of a non-denominational prayer at the beginning of each school day a violation of the first amendment prohibition against establishment of religion. *Engel v. Vitale*, 370 U.S. 421, 82 S.

Ct. 1261 (1962). The Supreme Court ruled that a law authorizing a short period for "voluntary or silent prayer" is also unconstitutional, but indicated that allowing a moment of silence probably would not violate the U. S. Constitution. *Wallace v. Jaffree*, 472 U.S. 38, 105 S. Ct. 2479 (1985). The U.S. Supreme Court held that an invocation and a benediction at public school graduation ceremonies violate the establishment clause. *Lee v. Weisman*, 112 S. Ct. 2649 (1992).

A moment of silence may be observed in school. **M.S. 126.091**

Religious Observances

The Eighth Circuit Court of Appeals held that it is not a violation of the first amendment's ban on establishing a state religion for a school to observe holidays that have both a religious and a secular basis. The court found permissible programs containing music, art, literature, and drama having religious themes, and the temporary display of religious symbols associated with religious holidays. *Florey v. Sioux Falls School District 49-5*, 619 F.2d 1311 (8th Cir. 1980), cert. denied, 449 U.S. 987, 101 S. Ct 409 (1980).

A district must make reasonable efforts to accommodate a student who wishes to be absent from school for a religious observance. **M.S. 120.106**

Release Time

In *Zorach v. Clauson*, 343 U.S. 306 (1952), the U. S. Supreme Court upheld a "release-time" program in which public school students were allowed to leave school for religious purposes. The court found that no religious instruction occurred on school property, no public funds were expended to support the program, and students had parental permission to attend the program.

At a parent's request, a student may be released from school for up to three hours per week for purposes of receiving religious instruction. **M.S. 120.101, subd. 9, paragraph (3)**

Course Requirements

The U. S. Supreme Court held that a statute forbidding the teaching of evolution unless "creation science" is also taught violated the constitutional ban on state establishment of religion. *Edwards v. Aguillar*, 482 U.S. 578 (1987).

Access to Facilities for Religious Purposes

The Equal Access Act forbids secondary schools receiving federal funds from barring student religious groups from meeting at school if the school has a general policy of allowing student meetings. **20 U.S.C. §4071** The United States Supreme Court ruled that a school district that allows "noncurriculum related" student groups access to school facilities must give access on equal terms to all student groups, regardless of the religious or other content of members' speech. *Board of Education of the Westside Community Schools v. Mergens*, 110 S. Ct. 2356 (1990).

Exemption from Compulsory Attendance

The United States Supreme Court ruled that certain pupils may be exempt from the state compulsory attendance law if they can show that the law imposes an unnecessary burden on the right to free exercise of religion under the first amendment. *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

Fourth Amendment Rights

Search and Seizure

The United States Supreme Court ruled that the fourth amendment of the U. S. Constitution protects students against unreasonable searches and seizures, but permits school officials to search students if there are "reasonable grounds" for suspecting that a student has violated the law or school rules. For a search to be constitutional, it must be "justified at its inception" and there must be reasonable grounds for suspecting "the search will turn up evidence that the student has violated or is violating either the law or the rules of the school." The scope of the search must be "reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the material of the infraction." In adult criminal search and seizure cases, courts use a more stringent standard that requires a warrant based on "probable cause" before a search can be done. *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).

Locker Searches

The *T.L.O.* decision did not address whether students have a legitimate expectation of privacy in their lockers. Under state law, school lockers belong to the school district and school authorities may inspect the inside of the lockers. School authorities may search students' personal possessions in a school locker only if the school authorities have a reasonable suspicion

that the search will uncover evidence of a violation of law or school rules. **M.S. 127.47**

Drug Testing

A drug test is considered "a search" under the fourth amendment. In 1988, a federal court upheld a school district's drug testing program requiring random urinalysis for high school athletes and cheerleaders on the grounds that (1) the right to participate in extracurricular activities was not constitutionally guaranteed and (2) school officials' interest in a drug free athletic program outweighed students' privacy interest. *Schaill v. Tippecanoe County School Corp.*, 864 F.2d 1309 (7th Cir. 1988).

In 1995, the U.S. Supreme Court declared that drug use impairs children, for whom the state has a special responsibility, and drug use by student-athletes is dangerous because of the high risk of immediate physical harm to the drug user or those with whom the athlete is playing. *Acton v. Veronica School District*, 796 F.Supp. 1354, rev'd, 23 F.3d 1514 (9th Cir. 1994), rev'd, 115 S. Ct. 2386 (1995). A policy requiring all students to submit to urinalysis likely would be ruled unconstitutional.

For further information, see **Drug Testing and Searches in Public Schools**, September 1989, House Research Department.

Fourteenth Amendment Rights

School Desegregation/ Integration

Racial segregation or other race-based discrimination in public schools and other educational institutions denies minority students the "equal protection" of the laws and is prohibited under the fourteenth amendment. *Brown v. Board of Education*, 347 U.S. 483, 74 S. Ct. 686 (1954); **M.S. 363.03, subd. 5**

Family Relations

With a few exceptions noted in this section and elsewhere in the guidebook, the statutes do not regulate relations between married parents and their children who live together. Statutes exist primarily to deal with needs that arise when a new family is being created—for example, by marriage or adoption—or when a family is changing form—for example, due to events like divorce, death, or a minor's marriage. For provisions regulating circumstances arising from neglect or abuse of children by family members see **Unlawful Acts against Youths**, page 53 in this part and the **Juvenile Court**, page 79 in Part 2.

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All Families

Child's Residence

Parents choose the residence of an unmarried child under age 18. A child who leaves that residence without permission is considered a runaway and can be taken into custody. **M.S. 260.015, subd. 20; 260.165**

Child's Surname

Neither parent has a superior right to choose a child's surname, but once a name is chosen the court will be very unwilling to change it if one parent objects. *Application of Saxton*, 309 N.W.2d 298 (Minn. 1981), cert. denied, 455 U.S. 1039, 102 S. Ct. 1737 (divorced mother not allowed to change children's last name to hyphenation of her name and father's name).

Housing Discrimination against Families with Children

The Human Rights Act prohibits (1) refusal to rent or sell real estate to persons with children and (2) any unlawful restrictions against children in a real estate sale or rental advertisement. Various exceptions exist for owner-occupied, cooperative, and elderly housing units. **M.S. 363.01-363.03**

Emancipation of a Minor

"Emancipation" means that a minor has the same legal rights and obligations as an 18 year old adult. A minor can be emancipated by a legal marriage or by parental consent. *State ex. rel. Scott v. Lowell*, 78 Minn. 166, 80 N.W. 877 (1899); *Minneapolis v. Orono*, 212 Minn. 7, 2 N.W.2d 149 (1942). For a child age 16 or older who is the subject of a petition for a "child in need of protection" the juvenile court may authorize an independent living situation for the child that is the equivalent of emancipation. **M.S. 260.191, subd. 1, clause (4)**

Minnesota Statutes do not provide grounds or a procedure for emancipation, but the statutes reflect an assumption that minors may be emancipated. Examples include:

- reference to an emancipated minor being able to forego immunization because of religious belief **M.S. 123.70, subd. 1**
- an emancipated minor is allowed to own a passenger auto or truck **M.S. 168.101, subd. 1**

- a legally emancipated minor is eligible for general assistance **M.S. 256D.05, subd. 1(10)**
- an existing guardianship may be discharged upon a showing that the child is emancipated **M.S. 260.245**
- a divorced parent must provide health insurance coverage for a minor child until the child is emancipated **M.S. 518.171, subd. 5**

Emancipation could be expected to occur (1) by reaching the age of 18, (2) by lawful marriage, or (3) by court order. The statutory references above do not indicate which, if any, of these is assumed to be the basis for emancipation.

Marriage by a Minor

A 16 year old may marry with parental consent. Anyone may marry at age 18. **M.S. 517.02**

Grandparent Custody

If a child has resided with a grandparent for at least a year and a parent during that time, without cause, has failed to comply with the duties of the parent-child relationship (contact, support, care, etc.), the grandparent may obtain a court order for custody if the parent tries to remove the child. **M.S. 518.158**

Visitation

If an unmarried minor lives with (1) a grandparent or great-grandparent for at least 12 months, or (2) an individual other than a foster parent for at least two years, the grandparent, great-grandparent, or other individual may obtain a visitation order if statutory requirements are met. **M.S. 257.022, subds. 2a and 2b**

Designated Parents

A parent who has legal custody of a minor child may complete a form that names another adult as designated parent, with authority to care for the child for up to a year upon the parent's request. **M.S. chapter 257A**

Divorced Parents

Child Custody

After an annulment, dissolution, or legal separation, the court must order either sole or joint legal and physical custody of minor children. In deciding custody, the court must consider the best interests of the child and not prefer one parent over the other on the basis of the parent's sex. There is a presumption that joint legal custody is in the child's best interests. If the child is old enough the judge may ask her or his custody preference. **M.S. 518.17**

Changing Child's Residence

The child resides with the parent who has physical custody. If the noncustodial parent has visitation rights, the child can be moved out of state only with a court order or the noncustodial parent's consent. **M.S. 518.175, subd. 3**

Parent's Visitation Rights

In dissolution or legal separation proceedings, on request of the noncustodial parent, the court must grant visitation rights in the best interests of the child. The court may restrict visitation or deny it entirely, if it would endanger or impair the child. A parent's failure to pay support because of inability to do so is not sufficient cause to deny visitation. If one parent wrongfully denies the other's visitation rights, various remedies are available. The court may also refer a visitation dispute to a visitation expeditor or mediation. **M.S. 518.175; 518.1751; 518.619**

Other Parental Rights

Notice must be given to both parents that they have the right to (1) obtain certain education, health and religious records of the child, and (2) attend school conferences, unless a court waives the notice to protect the welfare of a party or child. **M.S. 123.35, subd. 18; 518.17, subd. 3**

Grandparent's Visitation Rights

In all dissolution, separation, custody, annulment, and parentage proceedings, the child's grandparent or great-grandparent may ask the court for reasonable visitation rights to an unmarried minor child. The rights may be granted if they do not interfere with the parent and child relationship. Visitation rights end if the child is adopted by someone other than a step-parent or grandparent. **M.S. 257.022**

Deceased Parents

Appointing a Guardian for an Orphan

The parent of an unmarried minor may appoint a guardian by will. A minor 14 years or older or an adult interested in the minor's welfare may object to the choice. **M.S. 525.6155; 525.616**

If parents do not name a guardian by will, the court may put the child under the guardianship of the Commissioner of Human Services, a licensed child placing agency, or an individual willing and able to take responsibility. **M.S. 260.242, subd. 1b(a)-(c)**

Guardianship ends when the child dies, is adopted, legally marries, or turns 18. **M.S. 525.6192**

Grandparent's Visitation Rights

If a parent dies while a child is a minor, a grandparent or great grandparent may obtain a court order for visitation if visitation would not interfere with the parent and child relationship. Rights end if the child is adopted by anyone other than a step-parent or grandparent. **M.S. 257.022, subds. 2 and 3**

Unmarried Parents

Child Custody and Visitation

The mother has sole custody until paternity is established, either by the father's legally effective admission or by court action. If paternity is established, the father may petition the court for custody or visitation. If the child is old enough, the court may ask his or her custody preference. **M.S. 257.541, subd. 2(b)**

Establishing Parentage

The child, parent, or welfare agency may bring an action to establish the child's parentage. The parties may be required to have blood tests. An action to determine the existence of the father and child relationship for a child who has no presumed father is not barred until one year after the child reaches the age of majority. **M.S. 257.51-257.74**

An alternative to legal action: A man is presumed to be the biological father of the child if he and the child's mother acknowledge his paternity in writing signed by both of them and filed with the state registrar of vital statistics. **M.S. 257.75**

Adoption

Required Consents

An individual aged 14 or older may be adopted only if she or he consents. **M.S. 259.24, subd. 3**

If an unmarried parent under 18 wants to place a child for adoption, he or she must be offered consultation with an attorney, clergy, or physician before consenting to the adoption. The consent of the minor's parents or guardian, if any, also is required. If the minor has no parent or guardian to give consent, the Commissioner of Human Services may do so. **M.S. 259.24, subd. 2**

Order of Preference

Child placing agencies and courts involved in adoption or foster placement proceedings must try to place a child according to the following order of preference: (1) relatives, (2) an important friend with whom the child has resided or had significant contact, (3) a family of the same race or ethnic background as the child, or (4) a family of a different race or ethnicity who is respectful of the child's heritage. **M.S. 259.29; 259.57, subd. 2; 259.77; 260.181, subd. 3**

Adoptee's Access to Original Birth Certificate

An adopted person 19 or older may request the information on his or her original birth certificate. The Commissioner of Human Services must try to notify each parent identified on the certificate of the request. If the birth parents agree, the information is disclosed.

If the commissioner cannot notify a birth parent and if the parent has not filed a consent to disclosure, the information may be disclosed as follows:

- If the person was adopted before August 1, 1977, he or she may petition for disclosure, which will be granted if the court determines that it is more beneficial than nondisclosure.

- If the person was adopted on or after August 1, 1977, the information must be released.

If a birth parent dies without revoking a nondisclosure request, the adopted person may petition the court for disclosure. The petition will be granted if the court determines that disclosure would be more beneficial than nondisclosure. **M.S. 259.89**

Adoptee's Access to Other Information

Adopted persons age 19 and older may ask an adoption agency to help determine whether a biological parent or adult sibling wants to have contact or share information. The agency will also transmit non-identifying health information relevant to any genetically related parties to an adoption. A reimbursement fee may be charged for these services. **M.S. 259.83**

Health and Social Services

Minors' access to health care services is dependent upon the parents or guardians, who are expected to act in the best interest of the child. Exceptions are made for older children who are financially independent, who have married or who have borne children themselves. Minors' access to social services is specifically authorized by a number of state laws that require counties to provide day care subsidies for currently eligible children, and child welfare and protective services for children at risk.

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Health Protection and Access to Health Services

The WIC Program

The Women, Infants and Children (WIC) program, administered by the Department of Health through local public and private non-profit health or human service agencies, provides supplemental foods, nutrition education, and health assessments and referrals to low-income women, infants, and children up to age five, who have family incomes at or below 185 percent of the federal poverty guidelines and who meet other eligibility requirements. Enrollment in WIC is limited by available funding. **M.S. 145.891 to 145.897**

Insurance

Minors' rights to private health insurance benefits usually depend upon the purchase of family coverage by a parent or guardian, or in some cases by a grandparent. Family coverage usually insures children under age 19, full-time college students under age 25, and handicapped dependent children of any age. Checkups, immunizations, and certain other preventive services are required to be covered without deductibles, copayments, or coinsurance up to age 6; immunizations are required to be covered on that basis up to age 18. **M.S. 62A.03; 62A.301; 62L.02, subd. 11; 62A.14; 62A.141; 62A.151; 62A.042; 62C.14, subd. 14; 62A.047**

Medical Assistance

Medical Assistance (MA), Minnesota's Medicaid program, is a joint federal/state program providing certain health care services to low-income adults and children who meet the eligibility requirements. MA has higher income limits for children, and persons under age 21 do not need to meet MA asset standards. To qualify for MA, infants up to two years old can have family incomes up to 275 percent of the federal poverty guidelines. Children two through five years old from families with incomes below 133 percent of the federal poverty guidelines are eligible for MA. Children six through 18 years old, born after September 30, 1983, are eligible for MA if family income is below 100 percent of federal poverty guidelines. **M.S. 256B.057**

Certain children with disabilities qualify for MA without regard to parental income under the "TEFRA" option. A child under age 19 who is disabled and who requires the level of care provided in a hospital, nursing facility, or intermediate care facility, is eligible for MA without regard to parental income if it is cost effective for the child to remain at home. **M.S. 256B.055, subd. 12**

The MinnesotaCare Health Plan

The MinnesotaCare health plan provides subsidized health coverage to children and families not eligible for medical assistance if the family income does not exceed plan income limits, set at 275 percent of the federal poverty guidelines, and the family meets other eligibility requirements. Special eligibility requirements and premiums apply to children from families with incomes that do not exceed 150 percent of the federal poverty guidelines. **M.S. 256.9351 to 256.9369**

Mental Health Services

Under the Children's Mental Health Act, county social service agencies must plan for and coordinate local children's mental health services. Counties coordinate a variety of mental health services for children under age 18 including education and prevention services, early identification and intervention services, screening, case management, emergency services, outpatient services, day treatment services, and residential treatment services. **M.S. 245.487 to 245.4888**

Lead Poisoning

Minnesota's Childhood Lead Poisoning Act addresses a potentially serious health hazard affecting children caused by exposure to lead from soil, dust, water or paint. The act does not require testing of children for elevated blood lead levels. Many children, however, are tested voluntarily for lead as part of routine well-child care. The act requires facilities performing blood lead analysis to report findings of high blood lead levels in children to the Department of Health. The act also details the steps to be taken to mitigate the health affects on children with elevated blood lead levels and specifies standards for lead hazard reduction. **M.S. 144.9501 to 144.9509**

Consent for Health Services

Abortion

A minor seeking an abortion in Minnesota must either notify both parents of the intended abortion and wait 48 hours, or seek judicial approval for the procedure.

An expedited confidential appeal is available to any minor for whom the court denies an order authorizing an abortion without notification. An order authorizing an abortion without notification is not subject to appeal. **M.S. 144.343**

Note: Subdivision 2 of the above statute was declared unconstitutional by the United States Supreme Court on June 25, 1990. The remainder of the statute is now operating as described above. See **Parental Notification of Abortion**, September 1990, House Research Department. *Hodgson v. Minnesota*, 110 S. Ct. 2926, 58 U.S.L.W. 4957 (1990).

Anatomical Gifts

Any person of sound mind who is at least 18 or any minor, with the written consent of a parent or legal guardian, may donate all or any part of his or her body for medical purposes after death. **M.S. 525.9211**

Blood Donations

Any person 17 or over may donate blood in a noncompensatory blood program without obtaining parental consent. **M.S. 145.41**

Emergency Treatment

Medical, dental, mental and other health services may be provided to minors without parental consent when, in a professional's judgment, treatment should be given without delay. **M.S. 144.344**

Financial Responsibility

A minor who gives legally effective consent is financially responsible for health services rendered. **M.S. 144.347**

Hepatitis B Vaccination

A minor may give effective consent for a hepatitis B vaccination. **M.S. 144.3441**

Information to Parent

A professional may inform a minor's parent of any medical treatment given or needed, whenever the professional determines it is necessary to the health of the minor. For purposes of access to health records of a minor, the term "patient" includes a parent or guardian, or a person acting as a parent or guardian in the absence of a parent or guardian, except in cases where the minor has received treatment related to pregnancy, venereal disease, alcohol or drug abuse or the minor is living apart from his or her parents and is financially independent. **M.S. 144.335 and 144.346**

Living Apart from Parents and Financially Independent

Any minor (1) who is living apart from his or her parents or legal guardian, with or without consent to do so and regardless of the duration of such separate residence, and (2) who is financially independent, regardless of the source or extent of his or her income, may give effective consent to medical, dental, mental or other health services for himself or herself. **M.S. 144.341**

Marriage or Giving Birth

Any minor who has been married or has borne a child may give effective consent to medical, mental, dental or other health services for his or her child, and for himself or herself. **M.S. 144.342**

Pregnancy, Venereal Disease, Alcohol or Drug Abuse

Any minor may give effective consent for medical, mental or other health services to determine the presence of or to treat pregnancy, venereal disease, alcohol and other drug abuse. **M.S. 144.343, subd. 1**

Representation to Persons Rendering Service

If a minor represents that he or she may give effective consent but in fact may not do so, his or her consent is effective if relied upon in good faith by the person rendering the health service. **M.S. 144.345**

Voluntary Institutional Treatment

Any person 16 years of age or older may request informal admission to a treatment facility for observation or treatment of mental illness, chemical dependency or mental retardation, and may give valid consent for hospitalization, routine diagnostic evaluation, and emergency or short-term acute care. Any person under the age of 16 may be admitted as a voluntary patient upon

the signature of a parent or guardian, so long as there is some independent review of the placement in accordance with *Parham v. J.R.*, 442 U.S. 584 (1979). **M.S. 253B.03, subd. 6(d); 253B.04, subd. 1**

Social Services

Child Abuse Prevention Trust Fund

Private and public organizations at the local level may develop and offer services and education programs designed to help prevent child abuse before it occurs. Many such offerings are financed through grants obtained from the state Child Abuse Prevention Trust Fund. Money from this source is also used to fund a child abuse hotline for professionals. The trust fund, which is administered by the Department of Human Services, is supported primarily by a surcharge on birth certificate filings. It is also supported by federal, state and private contributions. The trust fund will eventually have a balance of $20 million. Its present balance is approximately $1.5 million. **M.S. 257.80 to 257.807**

Child Abuse Reporting Act

State law requires certain professionals to report information if they know or have reason to believe a child is being abused or neglected, or has been abused or neglected within the preceding three years. The term "abuse" includes sexual abuse, physical abuse, threatened abuse, and mental injury. Reports are made to welfare or law enforcement personnel. Failures to report are prosecuted by the county attorney. County welfare agencies are required to investigate all reports. The act sets out special procedures that welfare and law enforcement agencies must follow in regard to collecting information to determine if abuse or neglect has occurred, and in regard to interviewing alleged child abuse and neglect victims. Welfare agencies must also provide protective services where necessary. "Protective services" can range from maintaining the child at home while providing services to the family to removing the child from the home and placing him or her in an out-of-home foster care placement. **M.S. 626.556.** See **Overview of the Child Abuse Reporting Act**, July 1994, House Research Department.

Child Care Assistance

Counties provide child care subsidies to eligible low-income families through the Basic Sliding Fee child care program, and to certain families receiving Aid to Families with Dependent Children (AFDC) through several AFDC-related child care programs. Counties use a variety of federal, state, and county funds to pay for these programs. **M.S. Chapter 256H.** See **Basic Sliding Fee Child Care Program**, July 1995, House Research Department.

Child Welfare

Counties are required to provide child welfare services to assure protection and financial assistance for children confronted with social, physical or emotional problems. **M.S. 393.07** Child welfare services are funded through federal, state and county sources.

Community Social Services

County boards are responsible for the administration, planning, and funding of social services. Where children are concerned, counties are required to provide services to children in families who are experiencing child dependency, neglect or abuse, pregnant teens, minor parents and their children, children with developmental disabilities or chemical dependency, and to income-eligible families in need of child care. The county of financial responsibility for a minor is the county in which her or his parents reside. **M.S. 256E.03, subd. 2; 256E.08; 256G.02, subd. 4**

Counties are also required to determine whether, after the birth of her child, a minor mother has a plan to care for herself and her child. If one is needed, the county must work with the minor mother to develop the plan, and the county must provide case management services as needed. **M.S. 257.33, subd. 2**

Foster Care Case Plans and Reviews

Social service agencies must prepare a case plan within 30 days of a child entering an out-of-home placement. Agencies are also required to conduct administrative reviews of foster care placements at least every six months and to seek court review, where applicable, in order to assure that children have been appropriately placed and that their case plans are being implemented. **M.S. 257.071**

Medical Neglect

State law defines withholding medically indicated treatment from an infant with a life-threatening condition as a form of neglect that must be reported under the Child Abuse Reporting Act. It also specifies what types of treatment are medically indicated, and it lists circumstances in which the infant's treatment can be limited. **M.S. 260.015, subd. 2a**

If a local welfare agency receives a report of medical neglect, the agency must consult the hospital and parents and, if necessary, obtain a court order for an independent medical examination and to prevent the withholding of the indicated treatment from the infant. **M.S. 626.556, subd. 10c**

Mental Health Services Coordination

Under the Children's Mental Health Act, county social service agencies have the obligation to plan for, develop and coordinate community-based mental health services. Counties may apply for state-funded grants to assist them in carrying out some of their responsibilities under this act. (See page 42) **M.S. 245.487 to 245.4888**

Minnesota Family Preservation Act

The Department of Human Services distributes grants to counties from a combination of state and federal sources which counties can use to provide out-of-home placement prevention and family reunification services. **M. S. Chapter 256F**

Public Assistance

A child's eligibility for AFDC and the other major public assistance programs is generally tied to his or her family's eligibility for the program. However, a child with disabilities who meets certain income and asset criteria may be eligible in his or her own right for Medical Assistance or MinnesotaCare. (See pages 41 and 42)

For a full description of the special eligibility requirements and benefits of the major public assistance programs, see **Minnesota Welfare, A Guide to Public Assistance Programs in Minnesota**, January 1995, House Research Department.

Subsidized Adoption Program

Using a combination of state and federal monies, the Department of Human Services makes adoption subsidies available to eligible families desiring to adopt a "special needs" child. Prospective adoptive parents of a child with special needs must, if adoption assistance is desired, negotiate an adoption assistance agreement with the department before the adoption is finalized. An adoption assistance agreement may provide the family with monthly financial assistance, assistance with one-time or periodic supplemental maintenance expenses, Medical Assistance eligibility for the child, or some combination of these. Adoption assistance agreements are reevaluated at least annually and are revised as appropriate. **M.S. 259.67**

Unlawful Acts by Youths

Minnesota law prohibits young people from performing certain activities that adults are allowed to do, and imposes penalties for such conduct. Minnesota law also requires young people to do certain things in order to protect their welfare. The rationale behind these laws is that, due to the harmful nature of the activity and the immature judgment abilities of young people, it is necessary to place stricter controls on youths than adults.

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Purchase and Consumption of Alcoholic Beverages
(Misdemeanor)

No person under 21 years of age may purchase alcoholic beverages, or possess or consume alcoholic beverages at a place other than his or her parent's home. The term "consume" includes actual ingestion of alcohol as well as the physical condition of having ingested alcohol. **M.S. 340A.503 and 340A.703**

Driving after Consuming Alcoholic Beverages
(Misdemeanor: drivers license suspension)

No person under 21 years of age may drive or operate a motor vehicle while consuming or after having consumed alcoholic beverages while there is physical evidence of the consumption in the person's body. In addition to criminal penalties, an underage person may lose his or her driver's license for between 30 and 180 days. **M.S. 169.1218**

Use or Purchase of Tobacco or Tobacco-Related Devices
(Petty Misdemeanor)

No minor may posses, use, purchase, or attempt to purchase tobacco or tobacco-related devices such as cigarette papers or pipes. **M.S. 609.685**

Possession of a Pistol or Assault Weapon
(Felony)

No minor may possess a pistol or semiautomatic military-style assault weapon unless the minor (a) is in the actual presence or under the direct supervision of a parent or guardian, (b) is possessing it for military drill purposes, (c) is using it in an approved and supervised target practice range, or (d) has completed a state-approved marksmanship and safety course. **M.S. 624.713**

Possession of a Firearm
(Misdemeanor)

No child under 16 years of age may possess a firearm unless he or she is (a) accompanied by a parent or guardian, (b) on the parent or guardian's residential property, (c) participating in an organized target shooting or firearms safety program, or (d) over 14 and has a firearms safety certificate from the Department of Natural Resources. **M.S. 97B.021**

Possession of an Assault Weapon in a Public Place
(Felony)

A person under the age of 21 who illegally carries a semiautomatic military-style assault weapon in a public place is subject to increased criminal penalties. **M.S. 624.7181**

Possession or Use of Tear Gas
(Misdemeanor)

No person under the age of 16 may use or possess tear gas except by written permission of a parent or guardian. **M.S. 624.731**

Possession or Use of Electronic Incapacitation Device
(Gross Misdemeanor)

No person under the age of 18 may use or possess an electronic incapacitation device ("stun gun"). **M.S. 624.731**

Mandatory Use of Motorcycle Helmet
(Petty Misdemeanor)

Persons under the age of 18 must wear a motorcycle helmet while operating or riding a motorcycle on public roadways. **M.S. 169.974**

Curfew Ordinances

Although there are no statewide curfew restrictions for minors, state law authorizes local governments to enact local curfew ordinances and specifically authorizes county boards to adopt countywide curfews applicable to all unmarried minors. Any countywide curfew ordinance adopted in the seven-county metropolitan area must contain an earlier curfew for children under the age 12 than for older children. **M.S. 145A.05, subd. 7a**

Gambling
(Misdemeanor; Petty Misdemeanor)

A person under age 18 may not (1) buy a lottery ticket; (2) make a bet or cash a winning ticket at a racetrack; or (3) participate in charitable gambling (except for certain bingo games). Violation of the charitable gambling and pari-mutual betting prohibitions is a misdemeanor. Violation of the lottery ticket prohibition is a petty misdemeanor. **M.S. 349A.12; 240.25, subd. 8; 240.26; 349.2127, subd. 8**

Unlawful Acts against Youths

There are a number of Minnesota laws that make it a crime or a petty misdemeanor to commit certain acts with or upon children. These criminal laws are designed to protect young people in a variety of situations where, due to youth and immaturity, children are considered particularly vulnerable to physical or emotional harm.

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Pornography Laws

Child Pornography
(Felony)

It is a crime to employ, use or permit a minor to pose or model for a sexual performance, or to disseminate or distribute for profit pictures or works depicting minors in a sexual performance. **M.S. 617.246**

(Gross Misdemeanor)

It is a crime to disseminate or possess photographic representations of sexual conduct involving a minor. **M.S. 617.247**

Dissemination of Pornographic Works to Minors
(Gross Misdemeanor)

No person may knowingly sell or rent to a minor pornographic pictures or films containing material harmful to minors or show or admit minors, whether or not for monetary consideration, to see such films or other presentations in a place of public accommodation.

(Misdemeanor)

The display of pornographic materials containing material harmful to minors is forbidden unless minors are physically segregated from the display or an opaque cover blocks from view those materials which may be harmful to minors. **M.S. 617.293-617.294**

Sexual Abuse Laws

Criminal Sexual Conduct
(Felony)

It is a crime for any person to engage in sexual conduct with a minor who is less than 13 years of age; a minor between the ages of 13 and 18 who is a certain number of years younger than the actor and/or under the actor's authority and control; or a minor who is under 16 and with whom the actor has a "significant relationship" as defined by law.

It is a crime for an adult to engage in sexual conduct with a minor when that person has a significant relationship to the minor, or is the minor's guardian. "Significant relationship" includes relationships by blood, marriage and adoption but excludes relationships more distant than first cousins. **M.S. 609.341-609.345**

(Gross Misdemeanor)

It is a gross misdemeanor for a person to engage in nonconsentual sexual contact with a minor or to engage in masturbation or lewd exhibition of the genitals in the presence of a minor under the age of 16. **M.S. 609.3451**

Indecent Exposure
(Gross Misdemeanor)

It is a gross misdemeanor for a person to willfully and lewdly expose the person's body, to procure another to expose private parts, or to engage in any other open or gross lewdness or lascivious behavior, in the presence of a minor under the age of 16. **M.S. 617.23**

Prostitution
(Felony)

It is a crime for any person to solicit, induce, promote or receive profit from the practice of prostitution by a minor or to hire a minor for sexual purposes. The penalty for these offenses varies depending on the type of offense and the age of the minor. It is also a gross misdemeanor for a non-relative to permit a minor to reside with him or her without parental consent when the non-relative knows or has reason to know that the minor is engaging in prostitution. **M.S. 609.321 to 609.324**

Sexual Solicitation
(Felony)

It is a crime for an adult to solicit (i.e. command, entreat, or attempt to persuade) a child under the age of 15 to engage in sexual conduct. Mistake as to age is not a defense to this crime. **M.S. 609.352**

Physical and Emotional Abuse Laws

Death Caused by Child Abuse
(Felony; Life Imprisonment)

A person who causes the death of a child while committing or attempting to commit child abuse is guilty of first degree murder if (1) there is a past pattern of child abuse and (2) death occurs under circumstances manifesting an extreme indifference to human life. **M.S. 609.185 (5)**

Death Caused by Malicious Punishment of a Child
(Felony)

A person who causes the death of a child while committing or attempting to commit malicious punishment of a child is guilty of first degree manslaughter. **M.S. 609.20**

Death Caused by Neglect or Endangerment of a Child
(Felony)

A person who causes the death of a child while committing or attempting to commit neglect or endangerment of a child is guilty of second degree manslaughter. **M.S. 609.205**

False Imprisonment
(Felony)

No person who knowingly lacks legal authority may intentionally confine or restrain someone else's minor child without the consent of the minor's parent or legal custodian.

(Gross Misdemeanor)

No parent, guardian or caretaker may subject a minor to unreasonable physical confinement or restraint, if done in a cruel manner and if excessive under the circumstances.

(Felony)

If substantial bodily harm results from the unreasonable confinement or restraint, the offense becomes a felony. **M.S. 609.255**

Malicious Punishment
(Gross Misdemeanor)

No parent, guardian or caretaker may, through an intentional act or series of acts against a minor, use unreasonable force or cruel discipline against the minor.

(Felony)

If substantial or great bodily harm results from the person's actions, the offense becomes a felony. **M.S. 609.377**

Assault; Past Pattern of Abuse
(Felony)

A person who assaults a minor and causes any amount of bodily harm is guilty of a felony if the person has engaged in a past pattern of child abuse against that minor. **M.S. 609.223(2)**

Assault or Malicious Punishment of Child under the Age of Four
(Felony)

A person who commits an assault or malicious punishment crime against a child under the age of four is guilty of a felony if the act causes any physical harm to the child's head, eyes, or neck, or causes multiple bruises to any other part of the child's body. **M.S. 609.223(3); 609.377**

Neglect or Endangerment
(Gross Misdemeanor Felony)

A parent, guardian or caretaker may not (1) willfully deprive a minor child of necessary food, clothing, shelter, or health care when reasonably able to provide these necessities, if the deprivation substantially harms or is likely to substantially harm the child's physical, mental, or emotional health; (2) knowingly permit the continuing physical or sexual abuse of the child, (3) endanger a child's health by intentionally causing or permitting the child to be placed in a dangerous situation or to be present where illegal drugs are possessed or sold; or (4) endanger a child under the age of 14 by intentionally or recklessly allowing the child to have access to a loaded firearm. The acts are punishable as gross misdemeanors; however, if the neglect or endangerment results in substantial harm to the child, the act is punishable as a felony. **M.S. 609.378**

Nonsupport
(Misdemeanor)

No person legally obligated to provide for the support of a child under the age of 16 may knowingly fail to do so without lawful excuse.

(Gross Misdemeanor; Felony)

The offense becomes a gross misdemeanor if the nonsupport continues for more than 90 days and it becomes a felony if the nonsupport continues for more than 180 days. **M.S. 609.375**

Kidnapping
(Felony)

No child under 16 years of age may be confined or taken from one place to another without the consent of the child's parents or legal custodial guardian. Unlike the situation with adult kidnapping victims, consent of the child victim to the kidnapping is not a defense. **M.S. 609.25**

Deprivation of Parental or Custodial Rights
(Gross Misdemeanor; Felony)

No person may conceal a minor child for the purpose of depriving a parent or other custodian of his or her parental, custodial or visitation rights to the child, nor may a person abduct a minor child for the purpose of depriving a parent of his or her parental rights, unless a person reasonably believes the action is necessary to prevent physical or sexual assault or substantial emotional harm. Additionally, no adult may refuse to return a minor child who is more than two years younger than the adult to the child's parent, contribute to the child's truancy or running away, or reside with a child under the age of 16 without parental consent. **M.S. 609.26**

Safety Laws

DWI; Child Endangerment

A person who violates the "driving while intoxicated" laws is subject to increased criminal and administrative penalties if the person commits the offense with a child in the vehicle who is under the age of 16 and is more than three years younger than the driver. **M.S. 169.121; 168.042; 169.1217**

Unused Refrigerator or Container
(Misdemeanor)

It is unlawful to allow an unused refrigerator or other container to be exposed and accessible to children, if it is large enough to contain a child and has doors which fasten automatically when closed. **M.S. 609.675**

Alcoholic Beverage Sales
(Gross Misdemeanor or Felony)

No one may sell or give alcoholic beverages to a person under 21 years of age. The penalty for this crime increases to a felony if a nonretailer sells alcohol to an underage purchaser, and the purchaser becomes intoxicated and suffers or causes great bodily harm or death. **M.S. 340A.503(2); 340A.701; and 340A.702**

Tobacco Sales
(Gross Misdemeanor or Misdemeanor)

It is unlawful to sell or furnish tobacco or tobacco-related devices, such as cigarette papers or pipes, to a minor. **M.S. 609.685**

Tear Gas Sales
(Misdemeanor)

No one may knowingly sell or furnish tear gas to a child under 16 years of age without the written permission of the child's parent or guardian. **M.S. 624.731**

Firearms Sales
(Felony or Misdemeanor)

No one within any municipality may furnish a minor with a firearm, airgun, ammunition or explosive without prior consent of the minor's parent or the municipality's police department. Outside municipalities, no one may furnish such items to a minor under 14 years of age without parental consent nor may a parent or guardian permit such a minor to handle or use a firearm outside the parent or guardian's presence. **M.S. 609.66**

Ammunition Displays
(Petty Misdemeanor)

It is unlawful to display centerfire handgun ammunition for sale to the public in a manner that makes the ammunition accessible to minors unless the ammunition is in an enclosed display case, under observation by store employees, or otherwise inaccessible to minors. **M.S. 609.663**

Negligent Storage of a Firearm
(Gross Misdemeanor)

No person may negligently store or leave a loaded firearm in a location where the person knows or reasonably should know a child under the age of 18 is likely to gain access, unless reasonable action is taken to secure the firearm against access by the child. **M.S. 609.666**

Electronic Incapacitation Device Sales
(Misdemeanor)

No one may knowingly sell or furnish an electronic incapacitation device ("stun gun") to a child under 18 years of age. **M.S. 624.731**

Toxic Substance Sales
(Misdemeanor)

No one may sell toxic glue, cement, or aerosol paint to a child under 18 years of age, unless the glue, cement, or paint is contained in a packaged model construction kit. Likewise, no one may sell butane or a butane lighter to a child under 18 years of age. **M.S. 609.684**

Child Restraint Seats
(Petty Misdemeanor)

When transporting a child under four years of age in a motor vehicle, the vehicle operator must install and use a federally-approved child restraint seat. **M.S. 169.685**

Seat Belt Use
(Fine)

A driver of a passenger or commercial motor vehicle must ensure that children too old for a child restraint seat but under certain ages wear a seat belt while riding in the vehicle. **M.S. 169.686**

Controlled Substance ("Drug") Laws

Drug Sale or Distribution to or by Means of a Minor
(Felony)

A person who unlawfully sells or distributes controlled substances to a minor or uses a minor to unlawfully sell or distribute controlled substances, is subject to increased criminal penalties. **M.S. 152.022 to 152.024**

Drug Crimes Committed in School Zones
(Felony)

A person who commits certain controlled substance crimes on or near school property (excluding postsecondary schools) or on a school bus while it is transporting students is subject to increased criminal penalties. **M.S. 152.022 to 152.023**

Drug Paraphernalia Sales
(Gross Misdemeanor)

An adult may not knowingly deliver drug paraphernalia to a minor who is at least three years his or her junior. **M.S. 152.094**

Miscellaneous Criminal Laws

Junk or Secondhand Dealers
(Misdemeanor)

No junkdealer or secondhand dealer is allowed to purchase property from a minor, without the written consent of the minor's parent or guardian. **M.S. 609.815**

Pawnbrokers
(Misdemeanor)

No pawnbroker is allowed to accept a pledge or purchase property from a person under the age of 18. **M.S. 325J.08**

Abduction for Marriage
(Gross Misdemeanor)

No person may take a minor for the purpose of marriage without the consent of the minor's parents or legal custodian. **M.S. 609.265**

Solicitation of Juveniles to Commit Crime
(Misdemeanor, Gross Misdemeanor, or Felony)

It is a crime for any adult to solicit or conspire with a minor to commit a criminal or delinquent act. The penalty for this crime varies depending on the severity of the solicited criminal act. **M.S. 609.494**

Contributing to Delinquency
(Misdemeanor)

No person may encourage, cause or contribute (1) to the need for protective services or delinquency of a minor or (2) to the commission of status offenses by the minor. **M.S. 260.315**

Gambling
(Misdemeanor)

It is illegal for racetracks, lottery ticket retailers, and organizations that conduct charitable gambling to allow persons under 18 to gamble. It is also illegal for anyone to give a lottery ticket to a person under age 18. These violations are all misdemeanors. **M.S. 240.13, subd. 8; 349.2127, subd. 8**

There is no actual prohibition in state law against persons under 18 entering casinos or gambling in them. However, tribal-state compacts prohibit Indian casinos from allowing a person under 18 to play blackjack or video gambling machines. A casino that allows a person under age 18 to gamble is not violating state law but may be subject to federal court action for violating the compact.

Providing a Tattoo to a Minor
(Misdemeanor)

No person may provide a tattoo to a minor unless the person receives written parental consent from both custodial and noncustodial parents. **M.S. 609.2246**

Miscellaneous Age Provisions

This section describes rights granted on the basis of age, in addition to those covered in other sections of the guidebook.

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Fishing and Hunting Licenses 66
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Access to Government Records

A minor and his or her parent or guardian may examine government data on the minor classified as either public or private, with certain exceptions:

- Parental financial data filed with a school is not available to a minor.
- At the minor's request, data will be withheld from a parent or guardian if the government agency determines that withholding is in the minor's best interest. **M.S. 13.02, subd. 8; 13.32, subd. 4**

Copies of child abuse victim videotape interviews can only be obtained by court order. **M.S. 611A.90**

Driver's License

A minor aged 15 or 16, and otherwise qualified to hold a driver's license, may get a restricted license for farm work or personal or family medical reasons. **M.S. 171.041; 171.042**

Minors aged 16 and 17 may be issued driver's licenses only after passing an approved course in driver education. The license application must be approved by either parent when both reside with the minor, or otherwise by the custodial parent or guardian. **M.S. 171.04(1)**

A minor may not drive a vehicle that carries passengers for hire. **M.S. 171.322**

Snowmobile Operation

A minor under 14 may not cross specified highways or use municipal streets while on a snowmobile. A minor between the ages of 14 and 18 may cross highways if the youth has a valid operator's license in possession. A minor between the ages of 12 and 14 may operate a snowmobile on public land under Department of Natural Resources (DNR) jurisdiction if the youth has an operator's license in possession. A minor under the age of 12 may operate a snowmobile on DNR regulated land only if accompanied by an adult. **M.S. 84.872**

Fishing and Hunting Licenses

Residents under 16 years old may fish without a license. **M.S. 97A.451, subd. 2**

Residents under 13 years old may hunt small game without a license. Residents aged 13 to 15 may hunt small game without a license if they have a valid firearms safety certificate. Residents under 14 must be accompanied by a parent or guardian while hunting. No hunting license may be issued to any resident under 16, except those under 16 who have a firearms safety certificate may purchase a big game license. **M.S. 97A.0451, subds. 3 and 4**

Office Holding

An individual must be 21 in order to hold state or local office. **Minn. Const., Art. VII, Sec. 6**

Voting

An individual may vote at age 18. **Minn. Const., Art. VII, Sec. 1**

2. The Courts

Minnesota law makes distinctions between adults and minors not only with regard to substantive rights and responsibilities, as described in Part 1, but also with respect to the type of court procedures under which these rights and responsibilities are judicially decided. Part 2 explains these court procedures in three sections.

Civil Adult Court describes procedures applicable to minors who are parties or witnesses to civil lawsuits in adult court.

Criminal Adult Court describes procedures applicable to minors who are involved in criminal cases in adult court as witnesses or parties. It also explains certain procedural protections pertaining to the care and custody of minors found to have committed criminal acts.

Juvenile Court describes the purposes and procedures of the juvenile court, which hears most cases involving criminal acts committed by minors and cases involving children in need of protection or care by the state.

Civil Adult Court

This section describes the rights and restrictions affecting minors as parties or witnesses in civil lawsuits in adult court.

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Parental Liability for Children's Torts and Contracts

The parent or guardian of a minor who willfully causes personal injury or property damage is liable for up to $500 damage, or up to $5,000 in a civil action for conduct that would be a bias crime. **M.S. 540.18; 611A.78**

There is no Minnesota statute or case law indicating whether parents are liable for a minor's contracts.

Parents' Liability to Children

Children may sue their parents for torts. Parents are held by case law to a "reasonable parent" standard in determining whether they are negligent. *Anderson v. Stream*, 295 N.W.2d 595, 601 (Minn. 1980).

Injury to Minors

A parent may bring suit to recover for injury done to a minor child. **M.S. 540.08**

Statute of Limitations

The statute of limitations does not run while a person is a minor, so a minor with a legal right of action has until he or she is 18 to file suit if parents do not do so, with one exception. The statute stops running in a medical malpractice case either seven years after the action arises or when the plaintiff turns 19, whichever is first. **M.S. 541.15**

Minors as Witnesses

A child under the age of ten is a competent witness unless he or she lacks the capacity to remember or to relate facts truthfully. **M.S. 595.02, subd. 1(l).**

Criminal Adult Court

This section describes procedures applicable to minors who are parties or witnesses in criminal cases in adult court, or who are confined in a correctional facility.

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Criminal Responsibility

Children under the age of 14 are considered legally incapable of committing crimes.

Children between the ages of 14 and 18 accused of criminal acts may be certified for adult criminal prosecution or designated as extended jurisdiction juveniles in the manner provided in the juvenile code.

If a child 16 years old or older is certified to adult court and is convicted of a felony offense, he or she may be charged and tried in adult court for any subsequent felony without going through the juvenile code's certification process.

A child who is alleged to have committed first degree murder after becoming 16 years old may be charged and convicted in adult court without going through the juvenile court's certification process, and without regard to the child's previous criminal or juvenile court record. **M.S. 609.055**

Admissibility of a Child's Hearsay Statements in Child Abuse Cases

Hearsay statements made by a child sex or physical abuse victim under ten years of age may be admitted into evidence in abuse cases if (a) the statement is shown to be reliable, and (b) the child either testifies in person or is unavailable as a witness and there is corroboration of the abuse. **M.S. 595.02, subd. 3**

Testimony by Closed Circuit TV or Videotape

A child under 12 years old who is a victim of physical or sexual abuse or another violent crime or who is a witness to the physical or sexual abuse of another may be allowed to give testimony over closed-circuit TV or on videotape, if the court decides that use of these devices is necessary to allow the child to testify without undue psychological trauma. **M.S. 595.02, subd. 4**

Minors as Witnesses

A child under the age of ten is a competent witness unless he or she lacks the capacity to remember or to relate facts truthfully. **M.S. 595.02, subd. 1(l).**

Child Sex Abuse Victim

No data in records or reports relating to criminal child sex abuse complaints or indictments that specifically identify the child are accessible to the public, except by court order. **M.S. 609.3471** Furthermore, when a child abuse victim is interviewed by the government, a record must be made of the time, place and substance of the interview. **M.S. 626.561**

Exclusion of Public from Trials Involving Children

The public may be barred from the courtroom by the judge during all or part of a child sex abuse trial if necessary to ensure fairness or protect the child. **M.S. 631.045**

Exclusion of Children from Criminal and Scandalous Trials

No person under age 17 may be present at a criminal prosecution unless involved or directly interested in the case. **M.S. 631.04**

The court is permitted to exclude minors whose presence is not necessary, if a trial involves obscene or scandalous matters. **M.S. 546.37**

Care and Custody of Juvenile Offenders

Minors may not be detained or confined in the same area as adult prisoners while in jail or lockup unless the minor has been indicted for first degree murder, certified for trial as an adult, or convicted of a crime as an adult. **M.S. 636.07 and 641.14**

The Commissioner of Corrections is prohibited from placing in a penal institution any juvenile referred by the juvenile court. **M.S. 242.14**

It is a misdemeanor for any person to abduct, conceal or improperly interfere with any juvenile inmate in a juvenile correctional facility. **M.S. 242.47**

Juvenile Court

This section provides a general overview of the juvenile justice system in Minnesota. First, the purpose and jurisdiction of the juvenile courts are described with an explanation of key terms and concepts necessary for understanding the function of the court. Next, the juvenile court process is explained: first, for delinquency and other offenses; second, for CHIPS cases.

This overview reflects the extensive changes made to the juvenile code by the 1994 Minnesota Legislature. All of the statutory provisions discussed in this section are contained in Minnesota Statutes, Chapter 260. Other provisions are found in the Juvenile Court Rules as of June 1, 1996.

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Purpose and Jurisdiction of Juvenile Court

The juvenile court in Minnesota is authorized to hear and decide two main categories of cases:

- those involving juveniles who commit unlawful acts, and
- those involving children who, for a variety of reasons, are in need of protection or services by or from the juvenile court.

However, the juvenile court lacks jurisdiction over two types of juvenile offenders: (1) juveniles 16 years or older who are alleged to have committed first degree murder, and (2) juveniles 16 years old or older who are alleged to have committed a petty misdemeanor-level traffic offense or a DWI or related nonfelony offense.

In addition, the juvenile court is responsible for the following legal actions:

- **terminations of parental rights** to a child. Parental rights may be terminated by the court either (a) for good cause with parental consent, or (b) if the child has been abandoned, continuously neglected, or if the parent's conduct shows a clear unwillingness or unfitness to be a parent;
- juvenile **marriages**;
- **adoptions;**
- **waivers of parental notification** sought by minor women wishing to terminate a pregnancy;
- **persons** (including adults) alleged to be **contributing to the neglect or delinquency of a minor**. All juvenile courts may order relief of a civil or injunctive nature, but only in counties having over 200,000 in population may the juvenile court hear and decide a misdemeanor criminal charge in these cases;
- appointments and removals of **guardians** for minors; and
- periodic review of a child's **foster care status**.

M.S. 260.111; 260.193

Records of juvenile court actions are accessible to the minor and his or her parents or guardian, but may be seen by others outside the judicial and law enforcement systems in most cases only with a court order. Court disposition orders in certain cases are shared with schools as discussed on page 23. All proceedings conducted by the juvenile court are closed to the public with one exception: hearings and court records involving minors 16 years old or older are open to the public if the minor is accused of a felony-level offense. **M.S. 260.155 and 260.161**

Juveniles Who Commit Unlawful Acts

As mentioned earlier, one important type of case generally assigned to the juvenile court involves minors who engage in unlawful conduct. In contrast to the adult courts, the juvenile proceeding in this context is not a criminal proceeding designed to fix criminal responsibility and punishment but, rather, is a civil proceeding designed to protect the child from the consequences of his or her own conduct, rehabilitate him or her and, at the same time, promote the public safety.

Juveniles committing unlawful acts fall into one of the following categories, depending mostly on the nature of the conduct involved:

Delinquents: children ten years old or older who commit acts which would be unlawful if committed by an adult;*

Extended jurisdiction juveniles: children 14 years old or older who commit felony-level delinquent acts and who are designated as being in this category by the prosecutor or the court;

Petty offenders: children who engage in conduct which is unlawful for them but not unlawful for adults, such as violating curfew, drinking and smoking. Also included in the petty offender category are juveniles charged with their first or second non-violent misdemeanor offense;

Juvenile traffic offenders: children who violate traffic laws. In certain cases, depending on the age of the child and the nature of the traffic offense, the matter may be handled exclusively by the adult court rather than the juvenile court.

M.S. 260.015 and 260.111

* However, children who commit traffic offenses are not labeled as delinquents, even if the conduct would have been unlawful if committed by an adult. Similarly, children who commit certain nonviolent misdemeanors or who are found in possession of a small amount of marijuana are classified as petty offenders rather than delinquents.

Certification for Adult Prosecution

In some cases, the juvenile court may decide that a child over the age of 14 who is accused of a particularly dangerous offense and/or has engaged in criminal conduct in the past would be handled more appropriately in the adult court. These alleged delinquents may be "certified to adult court for criminal prosecution" upon motion by the prosecutor if the juvenile court finds, after a hearing, that there is probable cause to believe the child committed a felony offense and that there is clear and convincing evidence that the public safety is not served by handling the case in juvenile court. Once a child has been certified to the adult court for prosecution he or she may be prosecuted, convicted and sentenced as if he or she were an adult.

The law presumes that certain juvenile offenders will be certified to adult court for criminal prosecution. A child is subject to this presumption if:

- the child was 16 or 17 years old at the time of the felony offense; and
- the court finds probable cause to believe the child committed either: (a) a felony offense that would result in a presumptive commitment to prison under the sentencing guidelines and applicable statutes (generally the more serious offenses); or (b) any felony offense while using a firearm.

In such cases, the child has the burden to rebut the presumption by clear and convincing evidence demonstrating that retaining the case in juvenile court serves public safety. If the child does not rebut the presumption, the court must certify the case to adult court.

M.S. 260.125

Dispositions for Juvenile Offenders

Assuming the juvenile court retains jurisdiction over the alleged juvenile offender, and, after a hearing, determines that the child did engage in the unlawful conduct, the court has available to it a variety of dispositions, including: fines, probation, counseling,

placement out of the home, loss of driver's license, restitution or community service, and (for delinquents only) commitment to the Commissioner of Corrections for placement in a state juvenile correctional facility. The juvenile court's jurisdiction over the child lasts until the child's 19th birthday.

M.S. 260.185; 260.193; and 260.195

Extended Jurisdiction Juveniles

A juvenile offender alleged to have committed a felony-level offense after reaching the age of 14 may be prosecuted as an "extended jurisdiction juvenile" (EJJ) instead of being certified to adult court or dealt with as a juvenile delinquent. This intermediate category may apply to the following offenders:

- 14 to 17-year-olds who are designated EJJs instead of being certified to adult court following a certification hearing;
- 16 and 17-year-olds who would have been subject to the presumption in favor of certification but who are, instead, designated EJJ by the prosecutor; and
- 14 to 17-year-olds who are designated EJJs by the court after a hearing on the matter.

A child who is designated an EJJ has the right to a jury trial in juvenile court on the issue of guilt.

If an EJJ is convicted of the offense, the child receives both a juvenile disposition and a stayed adult sentence. This stayed adult sentence may be executed and the child may be sent to prison if the child violates the terms of the juvenile disposition order. The court's jurisdiction over an EJJ lasts until the child's 21st birthday, unless ended sooner by the court.

M.S. 260.126

CHIPS Cases

The other major category of cases the juvenile court hears are those involving "children in need of protection or services" (CHIPS) by or from the juvenile court. Grounds for invoking the juvenile court's "CHIPS" jurisdiction include the following:

1. abandonment of the child;

2. physical or sexual abuse or emotional maltreatment of the child;

3. the child needs necessary food, shelter, or other care;

4. the child needs special care due to a physical, mental, or emotional condition;

5. the child is a medically-neglected infant within the statute's definition;

6. the child's parent or guardian desires, for good reason, to be relieved of the child's care and custody;

7. the child is in an illegal adoptive or foster care placement;

8. the child's parent or guardian is unable to provide care due to disability or immaturity;

9. the child is in dangerous surroundings or is exposed to criminal activity in the home;

10. the child has committed a delinquent act before becoming ten years old;

11. the child is a runaway from home;

12. the child is an habitual truant from school; or

13. The child is one whose parents' parental rights to another child have been involuntarily terminated within the past five years.

In CHIPS cases, the juvenile court is directed by law to secure for each child the care and guidance that is in the child's best interests. In so doing, the court must observe the following policies wherever possible and in the best interests of the child:

- to make reasonable efforts to maintain the child in his or her own home;

- to provide judicial procedures that protect the welfare of the child;

- to remove the child from parental custody only when his or her welfare or safety cannot otherwise be adequately safeguarded;

- when the child is placed out of the home, to secure care and discipline for him or her similar to that which should have been given by the parents; and

- to make reasonable efforts to reunite the child with his or her family, consistent with the child's best interests and safety.

M.S. 260.015; 260.011; 260.012

Dispositions in CHIPS Cases

The types of dispositions available to the court to achieve these purposes are: placing the child under protective supervision while permitting the child to remain at home; placing the child out of the home in a foster care setting or, under certain limited circumstances, in an independent living arrangement; allowing the child to be adopted in cases where the child is not returned home; ordering the abuser out of the home in cases of domestic child abuse; or ordering that the child receive special treatment for his or her mental or physical health. Dispositional orders are for a fixed period of time not to exceed one year and may be renewed or modified by the court.

If the child is in need of protection or services due to truancy or running away from home, the court may also order counseling, probation, delivery of the child to school by the parent or legal guardian, a fine, community service, loss or denial of driving privileges, or place the child in a correctional group home.

The court's continuing jurisdiction over the child lasts until the child's 19th birthday, except that in truancy cases jurisdiction ends on the child's 17th birthday.

M.S. 260.191

Court Process for Delinquency and Other Offenses

The following is a summary of the major stages of the juvenile court process as it relates to children alleged to have committed unlawful acts.

Apprehension

A child may be apprehended and taken into immediate custody by the police or a probation or parole officer before any court papers are filed, if the child is

- found in dangerous surroundings
- the subject of an arrest warrant
- subject to arrest
- a parole/probation violator, or
- under age 16 and truant from school. Custody under this circumstance is for the purpose of transporting the child home and into the custody of a parent or guardian, to school, or to a truancy service center.

M.S. 260.165

Pretrial Detention

No child taken into custody may be held for longer than 24 hours without a court order unless he or she was found in dangerous surroundings or apprehended pursuant to a warrant. In those situations, an alleged delinquent can be held up to 36 hours in a juvenile secure or shelter care facility, and others can be held up to 72 hours in a juvenile shelter care facility. In order to detain children in juvenile facilities longer than these time periods, the court must hold a detention hearing and find that pretrial detention is necessary. Then, it must review the propriety of this continued detention every eight days until the child's case is heard and decided.

The detention of alleged delinquents in an adult jail or lockup is strictly limited under Minnesota law as of August 1, 1991. In most cases, no child may be detained in an adult jail or lockup for longer than six hours in a standard metropolitan statistical area or for longer than 24 hours elsewhere unless a juvenile court petition and a motion to certify the juvenile for adult prosecution have been filed and a judge has approved the continued detention. A limited exception to the 24-hour rule exists if distance or weather conditions preclude a court appearance within 24 hours.

In these cases, the juvenile may be detained in the adult facility for up to 48 additional hours or, in the case of weather conditions, for up to 24 hours after safe travel is available.

M.S. 260.171 to 260.173

Filing of Petition or Citation

The juvenile court process is begun officially by the filing of a petition or citation with the court. Delinquency petitions are prepared and filed by the county attorney; citations for petty offenses and misdemeanor offenses may be filed by a peace officer. **M.S. 260.131; 260.132**

Arraignment Hearing
Rules for Juvenile Court

At the arraignment hearing, the child is given the opportunity to admit or deny the allegations contained in the petition. This hearing must be held within 20 days of the date on which the petition is served or, if the child is in detention, within five days of the time he or she was taken into custody.

If the child denies the allegations in the petition or if the court refuses to accept the child's admission, an adjudicatory hearing is scheduled to take place within 30 or 60 days, depending on whether or not the child is in detention. If the child admits to the allegations and the court accepts the admission, the court will schedule a disposition hearing.

Certification for Adult Prosecution Hearing

As was mentioned earlier, a hearing may be held by the juvenile court judge, upon motion by the prosecutor, as to whether an alleged delinquent over the age of 14 should be referred to the adult court for criminal prosecution. In ordering the certification, the court must find that there is probable cause that the child committed the charged offense and that there is clear and convincing evidence that the public safety would not be served by handling the case in the juvenile system. The law presumes that certain offenders will be certified to adult court (see page 81). **M.S. 260.125**

Extended Jurisdiction Juvenile Hearing

A hearing may be held by the juvenile court judge on whether to designate an offender as an "extended jurisdiction juvenile" (EJJ). Additionally, a child may be placed in the EJJ category without a hearing by the court or the prosecutor as an alternative to certification. If the child is not being considered for

certification, the prosecutor must ask the court to hold a hearing if the prosecutor wants the child placed in the EJJ category. The effects of placement in the EJJ category are described on page 82. **M.S. 260.126**

Adjudicatory Hearing

This hearing is the equivalent of a trial in adult court. The hearing is held before a judge, except that in EJJ prosecutions the child has the right to a jury trial on the issue of guilt. At the conclusion of the hearing the court has between 15 and 30 days to decide whether the allegations in the petition have been proven beyond a reasonable doubt. If the allegations have not been proven, the court must dismiss the petition. If they have been proven, the court may either (1) adjudicate the child as a delinquent or an offender or convict the child as an EJJ and schedule a disposition hearing or (2) withhold adjudication for up to 180 days pending examination or counseling of the child or pending probationary supervision.

M.S. 260.155; 260.185

Disposition Hearing

This hearing is similar to a sentencing hearing in adult court. It is designed to be informal and to allow all participants the opportunity to be heard. Based on the information received, the judge may order any one of the dispositions summarized on pages 81 and 82. **M.S. 260.185**

Major Constitutional Rights of a Child in Juvenile Court

Until fairly recently, children who appeared in juvenile court on charges of delinquency were not accorded the same constitutional rights as adults charged with criminal offenses. The rationale for this distinction was that the juvenile delinquency process was not designed to fix criminal responsibility, guilt and punishment but, rather, was designed to protect and rehabilitate the child.

Since 1966, however, the U. S. Supreme Court has recognized that juvenile court proceedings can and do affect the rights of children to "life, liberty and the pursuit of happiness" and, therefore, that juvenile court hearings and procedures must measure up to the essentials of due process and fair treatment.

Thus, during the late 1960s and early 1970s, the U. S. Supreme Court found, in a series of cases, that alleged delinquents have the following constitutional rights in juvenile adjudicatory hearings.

- right to **written advance notice** of the adjudicatory hearing, allowing adequate time to prepare for it
- **right to counsel***
- **privilege against self-incrimination**
- right to **cross-examine witnesses**. *In re Gault*, 387 U.S. 1 (1967)
- findings of delinquency must be based on **proof beyond a reasonable doubt** if the offense is one that would be unlawful if committed by an adult. *In re Winship*, 397 U.S. 358 (1970).
- the **double jeopardy** clause of the Fifth Amendment prohibits prosecution in adult court of a juvenile if an adjudicatory hearing has been held on the same matter in juvenile court. *Breed v. Jones*, 421 U.S. 519 (1975).

In contrast, however, the U.S. Supreme Court held in *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971) that a **jury trial** is not constitutionally required in the adjudicative phase of a juvenile court proceeding, because juries are not essential to fundamental fairness in fact-finding procedures. Several states have extended the right to trial by jury in some or all juvenile cases, however. For example, juveniles who have been designated "extended jurisdiction juveniles" in Minnesota's juvenile courts have a right to a jury trial during the adjudicatory hearing.

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* In 1994, the Minnesota Legislature made it extremely difficult for juvenile offenders charged with serious crimes to waive their right to counsel: juvenile offenders who are charged with felonies or gross misdemeanors or are to be placed out of the home must have counsel or, if the right to counsel is waived, must have stand-by counsel appointed. However, in 1995 the Minnesota Legislature provided that juveniles charged with a juvenile petty offense are not entitled to counsel appointed at public expense. The petty offender category includes not only status offenses, but also certain nonviolent misdemeanors.

Additionally, the Court held in *Schall v. Martin*, 467 U.S. 253 (1984) that **pretrial detention** of an alleged delinquent, based on the risk of his committing additional crimes prior to trial, does not violate the child's due process rights. It held that pretrial detention of alleged delinquents is compatible with the fundamental fairness requirement of the due process clause of the Fifth Amendment, given the protective rather than punitive objectives of the juvenile justice system.

Court Process for CHIPS Cases

The following is a summary of the major stages of the juvenile court process as it relates to children alleged to be in need of protection or services, and terminations of parental rights to children.

Pre-adjudication Detention

As explained more fully on page 85, under certain circumstances a child may be taken into immediate custody by a peace officer or by order of the court prior to the juvenile court hearing. In child protection cases, the usual reasons for doing so are because the child is a runaway, to ensure the child's presence at the hearing, or to remove the child from surroundings or conditions which endanger or reasonably appear to endanger the child's health or welfare. Such a child may be held in a shelter care facility for no longer than 72 hours, unless a petition has been filed and the judge determines after a detention hearing that the child should remain in custody. In addition, upon the request of a party, the court will hold the adjudicatory hearing on the petition within 60 days of the detention hearing, unless another party shows good cause why the hearing should not be held.

The detention order must be reviewed informally by the judge every eight days until the case is decided. The detention order must include rules for parental visitation unless visitation would endanger the child's physical or emotional well-being.

Children who are detained because they are alleged child abuse victims cannot be given mental health treatment for the effects of the abuse until the court finds probable cause to believe the abuse occurred or unless treatment is agreed to by the child's parent or guardian.

M.S. 260.165; 260.171 to 260.173

Filing of Petition or Citation

Any reputable person, including any agent of the Commissioner of Human Services, may file a CHIPS petition in juvenile court. Any reputable person may likewise petition the juvenile court to terminate the rights of a parent to his or her child if he or she has knowledge of circumstances that support such a petition. Additionally, the social service agency responsible for the placement of a child in voluntary foster care may petition the court to review the child's foster care status. All petitions are drafted by the county attorney and verified by the petitioner.

A peace officer may issue a citation to a child believed to be a runaway, and a school attendance officer may issue a citation to an alleged truant. A citation filed with the court has the legal effect of a petition.

M.S. 260.131 to 260.133; 260.231

First Appearance
Rules for Juvenile Court

This is a hearing at which the child and the child's parents and guardian are required to admit or deny the allegations of the petition. This hearing must be held within ten days after a child has been placed in pre-adjudication detention, or 20 days after the child is served with the petition or citation if he or she is not in detention. If the allegations contained in the petition are admitted, the court will schedule a disposition hearing. If denied, the court will schedule an adjudicatory hearing within 90 or 120 days, depending on whether or not the child is in detention.

Adjudicatory Hearing

The adjudicatory hearing is held to determine if the allegations of the petition are proven. In contrast to the delinquency or offender adjudicatory hearing, proof of the allegations need not be made "beyond a reasonable doubt" but only by "clear and convincing evidence," which is a lesser standard. If the court finds the allegations of the petition are proven, it may either

withhold adjudication for up to 180 days, or adjudicate the child as being in need of protection or services, or neglected and in foster care, and schedule a disposition hearing. If the proceeding involved allegations of child abuse, the court must file its decision no later than 15 days after the hearing is concluded.

Where the petition is one to terminate parental rights and the allegations are proven, the court will terminate parental rights and transfer custody of the child in a disposition hearing. Even where the allegations have not been proven, the court may still determine that the child is in need of protection or services, or that the child is neglected and in foster care. In such a case the court will adjudicate the child accordingly and will schedule a disposition hearing. **M.S. 260.155; 260.191; 260.241; Rules for Juvenile Court**

Disposition Hearing

If the court finds that a child is in need of protection or services, it may order the dispositions summarized on page 84. Where the court terminates the parental rights of both parents or of the only known living parent, guardianship and legal custody of the child will be transferred to the Commissioner of Human Services, a licensed child placing agency or a willing individual capable of assuming parental duties. **M.S. 260.191; 260.241**